

8-20-2013

State v. Gosch Clerk's Record v. 1 Dckt. 40895

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO)	SUPREME COURT NUMBER
Plaintiff/Respondent)	
	)	40895
vs.)	
)	
)	
Kirk Julliard Gosch)	
<u>Defendant/Appellant</u>)	

CLERK'S RECORD

APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI
THE HONORABLE BENJAMIN R. SIMPSON DISTRICT JUDGE
FIRST JUDICIAL DISTRICT, PRESIDING

SEAN P. WALSH
CONFLICT STATE APPELLATE
PUBLIC DEFENDER
500 N. GOVERNMENT WAY, SUITE 100
COEUR D'ALENE, IDAHO 83814

MR. LAWRENCE WASDEN
ATTORNEY GENERAL
STATE OF IDAHO
700 W. JEFFERSON, STE 210
BOISE ID 83720

State of Idaho vs. Kirk Julliard Gosch

Date	Code	User		Judge
12/30/2000	DSRS	MORELAND	Defendant's Supplemental Response To Discovery	Charles W. Hosack
	SUBF	MO'REILLY	Subpoena Return/found-Jessica Thomas	Charles W. Hosack
1/7/2005	NEWC	CLAUSEN	New Case Filed	To Be Assigned
	CRCO	CLAUSEN	Criminal Complaint	Benjamin R. Simpson
	HRSC	CLAUSEN	Hearing Scheduled (Arraignment/First Appearance 01/07/2005 02:00 PM)	Benjamin R. Simpson
	ARRN	CLAUSEN	Hearing result for Arraignment/First Appearance held on 01/07/2005 02:00 PM: Arraignment / First Appearance	Benjamin R. Simpson
	ORPD	CLAUSEN	Order Appointing Public Defender	Benjamin R. Simpson
1/13/2005	HRSC	MITCHELL	Hearing Scheduled (Preliminary Hearing 01/18/2005 08:30 AM)	Robert B. Burton
		MITCHELL	Notice of Hearing	To Be Assigned
1/14/2005	NAPH	OREILLY	Notice of Appearance, Request for Timely Preliminary Hearing, Motion for Bond Reduction and Notice of Hearing	To Be Assigned
	DRQD	OREILLY	Defendant's Request For Discovery	To Be Assigned
	SWRT	WATKINS	Search Warrant Returned	To Be Assigned
	INVT	WATKINS	Inventory Of Seized Property	Scott Wayman
	ORPP	WATKINS	Order Preserving Seized Property	Scott Wayman
	SWRT	WATKINS	Search Warrant Returned	Scott Wayman
	INVT	WATKINS	Inventory Of Seized Property	To Be Assigned
	ORPP	WATKINS	Order Preserving Seized Property	Scott Wayman
1/18/2005	CONT	MCINTOSH	Hearing result for Preliminary Hearing held on 01/18/2005 08:30 AM: Continued	Robert B. Burton
1/19/2005	HRSC	MITCHELL	Hearing Scheduled (Preliminary Hearing 02/01/2005 08:30 AM)	Benjamin R. Simpson
		MITCHELL	Notice of Hearing	To Be Assigned
	SUBF	MO'REILLY	Subpoena Return/found-Brandon M Capello	To Be Assigned
1/26/2005	PRSD	MORELAND	Plaintiff's Response To Discovery	To Be Assigned
	PRQD	MORELAND	Plaintiff's Request For Discovery	To Be Assigned
1/27/2005	DSRQ	MORELAND	Defendant's Supplemental Req. For Discovery	To Be Assigned
	PSRS	MORELAND	Plaintiff's Supplemental Response To Discovery	To Be Assigned
	AMCO	MORELAND	Amended Complaint Filed: added 2 charges	To Be Assigned
1/28/2005	PSRS	MORELAND	Plaintiff's Supplemental Response To Discovery	To Be Assigned
	SUBF	HILDRETH	Subpoena Return/found-Brandon M Capello	To Be Assigned
2/1/2005	PHWV	INMAN	Preliminary Hearing Waived (bound Over)	Benjamin R. Simpson
	BOUN	INMAN	Bound Over (after Prelim)	Benjamin R. Simpson
	ORPD	INMAN	Order Holding Defendant	Benjamin R. Simpson

State of Idaho vs. Kirk Julliard Gosch

Date	Code	User		Judge
2/4/2005	MOTN	TAYLOR	Stipulated Motion for Reduction of Bond	Charles W. Hosack
	ORDR	TAYLOR	Order to Reduce Bond	Charles W. Hosack
	BNRE	TAYLOR	Bond Reduced to \$10,000	Charles W. Hosack
2/7/2005	BNDS	HAMILTON	Bond Posted - Surety (Amount 10000.00)	Charles W. Hosack
	NODF	HAMILTON	Notice To Defendant	Charles W. Hosack
	WAVX	HAMILTON	Waiver Of Extradition To Idaho	Charles W. Hosack
	INFO	OREILLY	Information	Charles W. Hosack
2/15/2005	DFNG	MORELAND	Defendant's Written Plea Of Not Guilty	Charles W. Hosack
2/28/2005	HRSC	DOUGLAS	Hearing Scheduled (Jury Trial Scheduled 05/09/2005 09:00 AM) 4 days	Charles W. Hosack
	HRSC	DOUGLAS	Hearing Scheduled (Pre-Trial Conference 05/05/2005 03:00 PM)	Charles W. Hosack
		DOUGLAS	Notice of Hearing	Charles W. Hosack
3/2/2005	ORDR	DOUGLAS	Notice of Trial Setting & Pretrial Order	Charles W. Hosack
3/3/2005	MNSP	MORELAND	Motion To Suppress	Charles W. Hosack
3/17/2005	NOAC	MORELAND	Notice Of Assignment Change: Lynn Nelson in place of Anne Taylor	Charles W. Hosack
	HRSC	DOUGLAS	Hearing Scheduled (Motion to Suppress/Limine 04/20/2005 03:30 PM) L Nelson	Charles W. Hosack
3/21/2005	NOTC	CARROLL	Notice of Hearing	Charles W. Hosack
4/19/2005	HRVC	JOKELA	Hearing result for Motion to Suppress/Limine held on 04/20/2005 03:30 PM: Hearing Vacated L Nelson	Charles W. Hosack
5/5/2005	WAIV	DOUGLAS	Waiver Of Speedy Trial	Charles W. Hosack
5/6/2005	ORCN	DOUGLAS	Order To Continue Pretrial Conference and Jury Trial and Resetting Dates of Hearings	Charles W. Hosack
	CONT	DOUGLAS	Hearing result for Jury Trial Scheduled held on 05/09/2005 09:00 AM: Continued 4 days	Charles W. Hosack
	CONT	DOUGLAS	Hearing result for Pre-Trial Conference held on 05/05/2005 03:00 PM: Continued	Charles W. Hosack
	HRSC	DOUGLAS	Hearing Scheduled (Pre-Trial Conference 08/04/2005 03:00 PM)	Charles W. Hosack
	HRSC	DOUGLAS	Hearing Scheduled (Jury Trial Scheduled 08/08/2005 09:00 AM) 4 days	Charles W. Hosack
	NOHG	DOUGLAS	Notice Of Hearing	Charles W. Hosack
8/4/2005	HRHD	DOUGLAS	Hearing result for Pre-Trial Conference held on 08/04/2005 03:00 PM: Hearing Held	Charles W. Hosack
	GRNT	DOUGLAS	Motion Granted-PD's Mot/Continue	Charles W. Hosack
	CONT	DOUGLAS	Hearing result for Jury Trial Scheduled held on 08/08/2005 09:00 AM: Continued 4 days	Charles W. Hosack
8/5/2005	HRSC	DOUGLAS	Hearing Scheduled (Pre-Trial Conference 10/06/2005 03:00 PM)	Charles W. Hosack

State of Idaho vs. Kirk Julliard Gosch

Date	Code	User	Judge
8/5/2005	HRSC	DOUGLAS	Hearing Scheduled (Jury Trial Scheduled 10/11/2005 09:00 AM) 4 days
		DOUGLAS	Amended Notice of Hearing
10/6/2005	MNCN	DOUGLAS	Motion To Continue
	HRHD	DOUGLAS	Hearing result for Pre-Trial Conference held on 10/06/2005 03:00 PM: Hearing Held
	CONT	DOUGLAS	Hearing result for Jury Trial Scheduled held on 10/11/2005 09:00 AM: Continued 4 days
10/7/2005	HRSC	DOUGLAS	Hearing Scheduled (Jury Trial Scheduled 12/12/2005 09:00 AM) 4 days
	HRSC	DOUGLAS	Hearing Scheduled (Pre-Trial Conference 12/08/2005 03:00 PM)
		DOUGLAS	Notice of Hearing
	ORCN	DOUGLAS	Order To Continue Jury Trial
	NOAC	MILLER	Notice Of Assignment Change
11/15/2005		DOUGLAS	Amended Notice of Hearing
11/22/2005	PLWL	MORELAND	Plaintiff's Witness List
11/23/2005	HRSC	DOUGLAS	Hearing Scheduled (Motion to Suppress/Limine 12/01/2005 02:30 PM) Anne Taylor
	NOHG	CARROLL	Notice Of Hearing
11/28/2005	SUBF	JREYNOLDS	Subpoena Return/found Kirk J Gosch
11/30/2005	SUBF	MO'REILLY	Subpoena Return/found-David C Sincerbeaux
12/1/2005	HRHD	THORNE	Hearing result for Pre-Trial Conference held on 12/01/2005 02:30 PM: Hearing Held
	SUBF	MO'REILLY	Subpoena Return/found-Kevin S Gosch
	SUBF	MO'REILLY	Subpoena Return/found-Brandon M Capello
	CONT	DOUGLAS	Hearing result for Motion to Suppress/Limine held on 12/01/2005 02:30 PM: Continued Anne Taylor
12/2/2005	HRSC	DOUGLAS	Hearing Scheduled (Pre-Trial Conference 12/08/2005 03:00 PM)
	HRSC	DOUGLAS	Hearing Scheduled (Jury Trial Scheduled 12/12/2005 09:00 AM) 4 days
		DOUGLAS	Notice of Hearing
12/5/2005	NOHG	JOKELA	Notice Of Hearing
12/6/2005	DSRS	MORELAND	Defendant's Supplemental Response To Discovery
12/8/2005	HRHD	DOUGLAS	Hearing result for Pre-Trial Conference held on 12/08/2005 03:00 PM: Hearing Held
	GRNT	DOUGLAS	Motion Granted-PD's Mot/Continue
	CONT	DOUGLAS	Hearing result for Jury Trial Scheduled held on 12/12/2005 09:00 AM: Continued 4 days

State of Idaho vs. Kirk Julliard Gosch

Date	Code	User		Judge
12/9/2005	HRSC	DOUGLAS	Hearing Scheduled (Jury Trial Scheduled 02/13/2006 09:00 AM) 4 days	Charles W. Hosack
	HRSC	DOUGLAS	Hearing Scheduled (Pre-Trial Conference 02/09/2006 03:00 PM)	Charles W. Hosack
	HRSC	DOUGLAS	Hearing Scheduled (Motion to Suppress/Limine 01/13/2006 10:00 AM)	Charles W. Hosack
		DOUGLAS	Amended Notice of Hearing	Charles W. Hosack
	SUBF	MO'REILLY	Subpoena Return/found-David C Sincerbeaux	Charles W. Hosack
	SUBF	MO'REILLY	Subpoena Return/found-Brandon M Capello	Charles W. Hosack
12/12/2005	SUBF	OLSON	Subpoena Return/found-Jason J Shaw	Charles W. Hosack
	SUBF	OLSON	Subpoena Return/found-Kevin s Gosch	Charles W. Hosack
12/14/2005	NOHG	JOKELA	Notice Of Hearing	Charles W. Hosack
12/27/2005	SUBF	MO'REILLY	Subpoena Return/found-Jason J Shaw	Charles W. Hosack
12/30/2005	DSRQ	MORELAND	Defendant's Supplemental Req. For Discovery	Charles W. Hosack
1/9/2006	DSRQ	MORELAND	Defendant's Supplemental Req. For Discovery	Charles W. Hosack
1/10/2006	PSWL	MORELAND	Plaintiff's Supplemental Witness List	Charles W. Hosack
	SUBF	MO'REILLY	Subpoena Return/found-M Sherman	Charles W. Hosack
	SUBF	MO'REILLY	Subpoena Return/found-Vicki Carlock	Charles W. Hosack
	SUBF	MO'REILLY	Subpoena Return/found-Terry Morgan	Charles W. Hosack
	SUBF	MO'REILLY	Subpoena Return/found-Paul Berger	Charles W. Hosack
	SUBF	MO'REILLY	Subpoena Return/found-Deputy Shaw	Charles W. Hosack
1/11/2006	PBRF	MORELAND	Plaintiff's Brief in opposition to defendant's motion to suppress	Charles W. Hosack
	PSRS	MORELAND	Plaintiff's Supplemental Response To Discovery	Charles W. Hosack
1/12/2006	SUBF	THOMAS	Subpoena Return/found/Jason Shaw	Charles W. Hosack
1/13/2006	HRHD	DOUGLAS	Hearing result for Motion to Suppress/Limine held on 01/13/2006 10:00 AM: Hearing Held A taylor	Charles W. Hosack
	MISC	DOUGLAS	UNDER ADVISEMENT/MOTION TO SUPPRESS	Charles W. Hosack
1/23/2006	SUBF	THOMAS	Supeona Return/found-David Sincebeaux 01-22-06	Charles W. Hosack
1/30/2006	OPIN	DOUGLAS	Memorandum Opinion Filed (denying Motion to Suppress)	Charles W. Hosack
1/31/2006	SUBF	THOMAS	Subpoena Return/found--Eric Clemensen 12-12-05	Charles W. Hosack
2/1/2006	SUBF	HUTCHINSON	Subpoena Return/found-Grant Gosch	Charles W. Hosack
	PSRS	MORELAND	Plaintiff's Supplemental Response To Discovery	Charles W. Hosack
2/2/2006	PRJI	MORELAND	Plaintiff's Requested Jury Instructions	Charles W. Hosack
	MOTN	MORELAND	Motion for committal of defendant upon conviction	Charles W. Hosack
2/9/2006	MOTN	MORELAND	Motion to enforce plea agreement	Charles W. Hosack

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Date	Code	User		Judge
2/9/2006	SUBF	HUTCHINSON	Subpoena Return/found-Kevin S Gosch	Charles W. Hosack
	HRHD	DOUGLAS	Hearing result for Pre-Trial Conference held on 02/09/2006 03:00 PM: Hearing Held	Charles W. Hosack
	SRSD	OREILLY	Supplemental Response To Discovery	Charles W. Hosack
	MOTN	OREILLY	Motion For An Interlocutory Appeal	Charles W. Hosack
2/10/2006	HRSC	JOKELA	Hearing Scheduled (Motion 02/17/2006 02:30 PM) ANNE TAYLOR - 30 MIN	Charles W. Hosack
	PSWL	OREILLY	Plaintiff's Supplemental Witness List	Charles W. Hosack
	NOHG	MCCANDLESS	Notice Of Hearing	Charles W. Hosack
2/14/2006	RTSV	HUTCHINSON	Return Of Service-not found-Brandon M Capello	Charles W. Hosack
2/16/2006	SUBF	HUTCHINSON	Subpoena Return/found-Paul Berger	Charles W. Hosack
	SUBF	HUTCHINSON	Subpoena Return/found-Beth Bradbury	Charles W. Hosack
	SUBF	HUTCHINSON	Subpoena Return/found-Eric Clemenson	Charles W. Hosack
	SUBF	HUTCHINSON	Subpoena Return/found-Terry Morgan	Charles W. Hosack
2/17/2006	HRHD	DOUGLAS	Hearing result for Motion held on 02/17/2006 02:30 PM: Hearing Held/Motion for Interlocutory Appeal/Motion to Enforce Plea Agreement ANNE TAYLOR - 30 MIN	Charles W. Hosack
	CONT	DOUGLAS	Hearing result for Jury Trial Scheduled held on 02/21/2006 09:00 AM: Continued 4 days - TRIAL ROLLED ON A TO FOLLOW BASIS.	Charles W. Hosack
	DENY	DOUGLAS	Motion Denied-Mot/Enforce Plea Agreement	Charles W. Hosack
	MISC	DOUGLAS	Motion for Interlocutory Appeal UNDER ADVISEMENT	Charles W. Hosack
	HRSC	DOUGLAS	Hearing Scheduled (Pre-Trial Conference 03/09/2006 03:00 PM)	Charles W. Hosack
	HRSC	DOUGLAS	Hearing Scheduled (Jury Trial Scheduled 03/13/2006 09:00 AM) 4 days	Charles W. Hosack
		DOUGLAS	Amended Notice of Hearing	Charles W. Hosack
2/27/2006	ORDR	DOUGLAS	Order Denying Def's Motion for Interlocutory Appeal	Charles W. Hosack
	FILE	OREILLY	New File Created	Charles W. Hosack
2/28/2006	SUBF	THOMAS	Subpoena Return/found-Diane McFarlane 2-25-06	Charles W. Hosack
	SUBF	THOMAS	Subpoena Return/found-Jason Shaw 2-25-06	Charles W. Hosack
3/2/2006	SUBF	HUTCHINSON	Subpoena Return/found-David C Sincerbeaux	Charles W. Hosack
3/6/2006	HRSC	DOUGLAS	Hearing Scheduled (Motion to Compel 03/09/2006 03:00 PM)	Charles W. Hosack
	NOHG	HAMILTON	Notice Of Hearing	Charles W. Hosack
	MNCL	MORELAND	Motion To Compel discovery	Charles W. Hosack

State of Idaho vs. Kirk Julliard Gosch

Date	Code	User		Judge
3/9/2006	HRVC	DOUGLAS	Hearing result for Motion to Compel held on 03/09/2006 03:00 PM: Hearing Vacated/NOT ADDRESSED BY PD	Charles W. Hosack
	HRHD	DOUGLAS	Hearing result for Pre-Trial Conference held on 03/09/2006 03:00 PM: Hearing Held	Charles W. Hosack
3/10/2006	HRSC	DOUGLAS	Hearing Scheduled (Motion to Compel 03/22/2006 03:30 PM) Anne Taylor	Charles W. Hosack
	SUBF	HUTCHINSON	Subpoena Return/found-Jessica Thomas	Charles W. Hosack
3/13/2006	NOHG	MCCANDLESS	Notice Of Hearing	Charles W. Hosack
	SUBF	JOKELA	Subpoena Return/found Grant Gosch 03/09/06	Charles W. Hosack
3/14/2006	PSRS	MORELAND	Plaintiff's Supplemental Response To Discovery	Charles W. Hosack
	PSWL	MORELAND	Plaintiff's Supplemental Witness List	Charles W. Hosack
3/16/2006	SUBF	HUTCHINSON	Subpoena Return/found-Deputy Jay Stone, Work Release Cntr	Charles W. Hosack
3/20/2006	CONT	MOLLETT	Hearing result for Jury Trial Scheduled held on 03/20/2006 09:00 AM: Continued 4 days	Charles W. Hosack
	MOTN	MOLLETT	Motion To Continue Hearing	Charles W. Hosack
	ORDR	MOLLETT	Order To Continue Hearing	Charles W. Hosack
	DRSD	MORELAND	Defendant's Response To Discovery	Charles W. Hosack
	DSWL	MORELAND	Defendant's Supplemental Witness List	Charles W. Hosack
3/22/2006	HRHD	DOUGLAS	Hearing result for Motion to Compel held on 03/22/2006 03:30 PM: Hearing Held Anne Taylor	Charles W. Hosack
	DENY	DOUGLAS	Hearing result for Motion to Compel held on 03/22/2006 03:30 PM: Motion Denied Anne Taylor	Charles W. Hosack
	HRSC	DOUGLAS	Hearing Scheduled (Jury Trial Scheduled 04/10/2006 09:00 AM) 4 days	Charles W. Hosack
	HRSC	DOUGLAS	Hearing Scheduled (Pre-Trial Conference 04/06/2006 03:00 PM)	Charles W. Hosack
3/23/2006		DOUGLAS	Amended Notice of Hearing	Charles W. Hosack
4/3/2006	SUBF	HUTCHINSON	Subpoena Return/found-Jason J Shaw	Charles W. Hosack
4/4/2006	SUBF	HUTCHINSON	Subpoena Return/found-David C Sincerbeaux	Charles W. Hosack
	SUBF	HUTCHINSON	Subpoena Return/found-John Stone	Charles W. Hosack
	SUBF	HUTCHINSON	Subpoena Return/found-Jessica M Thomas	Charles W. Hosack
	SUBF	HUTCHINSON	Subpoena Return/found-Vicki Carlock	Charles W. Hosack
4/6/2006	HRHD	DOUGLAS	Hearing result for Pre-Trial Conference held on 04/06/2006 03:00 PM: Hearing Held	Charles W. Hosack
4/17/2006	CONT	HAMILTON	Hearing result for Jury Trial Scheduled held on 04/17/2006 09:00 AM: Continued 4 days / 2nd set -Judge Carey will try	Charles W. Hosack

State of Idaho vs. Kirk Julliard Gosch

Date	Code	User		Judge
4/19/2006	HRSC	DOUGLAS	Hearing Scheduled (Pre-Trial Conference 05/04/2006 03:00 PM)	Charles W. Hosack
	HRSC	DOUGLAS	Hearing Scheduled (Jury Trial Scheduled 05/08/2006 09:00 AM) 4 days	Charles W. Hosack
		DOUGLAS	Notice of Hearing	Charles W. Hosack
4/26/2006	DSWL	MORELAND	Defendant's Supplemental Witness List	Charles W. Hosack
5/3/2006	SUBF	THOMAS	Subpoena Return/found-Jessica Thomas	Charles W. Hosack
	SUBF	THOMAS	Subpoena Return/found-Sharon Gosch	Charles W. Hosack
	SUBF	THOMAS	Subpoena Return/found-Eric Clemenson	Charles W. Hosack
	SUBF	THOMAS	Subpoena Return/found-Vicki Carlock, ISP Investigations	Charles W. Hosack
	SUBF	THOMAS	Subpoena Return/found-Jerry Long	Charles W. Hosack
	SUBF	THOMAS	Subpoena Return/found-Grant Gosch	Charles W. Hosack
	SUBF	THOMAS	Subpoena Return/found-Julie Long	Charles W. Hosack
	SUBF	THOMAS	Subpoena Return/found-Rocky Dorame	Charles W. Hosack
	SUBF	THOMAS	Subpoena Return/found-Kasie Gordan	Charles W. Hosack
5/4/2006	HRHD	DOUGLAS	Hearing result for Pre-Trial Conference held on 05/04/2006 03:00 PM: Hearing Held	Charles W. Hosack
	CONT	DOUGLAS	Hearing result for Jury Trial Scheduled held on 05/08/2006 09:00 AM: Continued 4 days	Charles W. Hosack
	HRSC	DOUGLAS	Hearing Scheduled (Jury Trial Scheduled 07/10/2006 09:00 AM) 4 days	Charles W. Hosack
	HRSC	DOUGLAS	Hearing Scheduled (Pre-Trial Conference 06/29/2006 03:00 PM)	Charles W. Hosack
5/5/2006	SUBF	HUTCHINSON	Subpoena Return/found-Clark Rollins	Charles W. Hosack
	SUBF	HUTCHINSON	Subpoena Return/found-Eric D Clemensen20051078	Charles W. Hosack
	SUBF	HUTCHINSON	Subpoena Return/found-Carson W Cook	Charles W. Hosack
		DOUGLAS	Notice of Hearing	Charles W. Hosack
5/8/2006	SUBF	BROOK	Subpoena Return/found Jason J Shaw 02May06	Charles W. Hosack
5/22/2006	SUBF	THOMAS	Subpoena Return/found-David Sincerbeaux	Charles W. Hosack
5/23/2006	SUBF	HUTCHINSON	Subpoena Return/found-Jason J Shaw	Charles W. Hosack
6/12/2006	SUBF	BROOK	Subpoena Return/found John A Stone 08June06	Charles W. Hosack
6/29/2006	HRHD	DOUGLAS	Hearing result for Pre-Trial Conference held on 06/29/2006 03:00 PM: Hearing Held	Charles W. Hosack
7/7/2006	SUBF	BROOK	Subpoena Return/found Vicki Carlock 26Jun06	Charles W. Hosack
	SUBF	BROOK	Subpoena Return/found Grant Gosch 22Jun06	Charles W. Hosack
7/10/2006	MNCN	MORELAND	Motion To Continue Jury trial	Charles W. Hosack
	SUBF	BROOK	Subpoena Return/found Eric Clemenson 26Jun06	Charles W. Hosack

State of Idaho vs. Kirk Julliard Gosch

Date	Code	User		Judge
7/13/2006		DOUGLAS	Notice of Trial	Charles W. Hosack
7/18/2006	MREX	MORELAND	Motion To Release Plaintiff's Exhibits	Charles W. Hosack
7/19/2006	OREX	DOUGLAS	Order Releasing Exhibits	Charles W. Hosack
	SUBF	SRIGGS	Subpoena Return/found/Vicki Carlock	Charles W. Hosack
7/20/2006	SUBF	BROOK	Subpoena Return/found Sharon Gosch 18Jul06	Charles W. Hosack
	SUBF	BROOK	Subpoena Return/found Grant W Gosch 18Jul06	Charles W. Hosack
	SUBF	BROOK	Subpoena Return/found David Sincerbeaux 18Jul06	Charles W. Hosack
7/21/2006	SUBF	BROOK	Subpoena Return/found Eric Clemenson 18Jul06	Charles W. Hosack
	SUBF	BROOK	Subpoena Return/found Jason Shaw 19Jul06	Charles W. Hosack
	SUBF	BROOK	Subpoena Return/found Jason Shaw 19Jul06	Charles W. Hosack
	SUBF	BROOK	Subpoena Return/found Diane Mcfarlane 18Jul06	Charles W. Hosack
7/24/2006	PSRS	MORELAND	Plaintiff's Supplemental Response To Discovery	Charles W. Hosack
	DSRS	MORELAND	Defendant's Supplemental Response To Discovery	Charles W. Hosack
	ORDR	MOLLETT	Order Assigning Senior Judge	George D. Carey
7/25/2006	JTST	MOLLETT	Hearing result for Jury Trial Scheduled held on 07/25/2006 09:00 AM: Jury Trial Started 4 days / 1st set on 7/25	George D. Carey
7/26/2006	SUBF	SRIGGS	Subpoena Return/found/John A Stone 7/24/06	Charles W. Hosack
7/27/2006	MISC	MOLLETT	Jury Instruction Given	George D. Carey
	VERD	MOLLETT	Verdict	George D. Carey
	ORDR	MOLLETT	Order For Evaluation And Setting Sentencing	George D. Carey
	ACQU	JOKELA	Acquitted (after Trial) (I37-2732B(A)(2) Drug-trafficking In Cocaine)	Charles W. Hosack
7/28/2006	HRSC	MOLLETT	Hearing Scheduled (Sentencing 09/13/2006 03:00 PM)	Charles W. Hosack
8/22/2006	PSIR	MORELAND	Presentence Investigation Report	Charles W. Hosack
9/13/2006	DPHR	JOKELA	Hearing result for Sentencing held on 09/13/2006 03:00 PM: Disposition With Hearing	Charles W. Hosack
	NORA	JOKELA	Notice of Right to Appeal	Charles W. Hosack
	ORDR	JOKELA	Order to Report to Probation	Charles W. Hosack
	SNPF	RICKARD	Sentenced To Pay Fine (I37-2732B(A)(1) Drug-trafficking In Marijuana)	Charles W. Hosack
	SNIC	RICKARD	Sentenced To Incarceration (I37-2732B(A)(1) Drug-trafficking In Marijuana) Confinement terms: Jail: 180 days. Discretionary: 90 days. Penitentiary determinate: 2 years. Penitentiary indeterminate: 3 years.	Charles W. Hosack
	PROB	RICKARD	Probation Ordered (I37-2732B(A)(1) Drug-trafficking In Marijuana) Probation term: 3 years 6 months. (Supervised)	Charles W. Hosack

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Date	Code	User	Judge
9/13/2006	SNIC	RICKARD	Sentenced To Incarceration (I37-2732(A)(1)(A)-P/I Controlled Substance-poss With Intent Manu/deliver) Confinement terms: Jail: 180 days. Discretionary: 90 days. Penitentiary determinate: 2 years. Penitentiary indeterminate: 3 years.
	PROB	RICKARD	Probation Ordered (I37-2732(A)(1)(A)-P/I Controlled Substance-poss With Intent Manu/deliver) Probation term: 3 years 6 months. (Supervised)
	SNIC	RICKARD	Sentenced To Incarceration (I37-2732(E) Controlled Substance-poss Marijuana More Than 3 Oz) Confinement terms: Jail: 180 days. Discretionary: 90 days. Penitentiary determinate: 2 years. Penitentiary indeterminate: 3 years.
	PROB	RICKARD	Probation Ordered (I37-2732(E) Controlled Substance-poss Marijuana More Than 3 Oz) Probation term: 3 years 6 months. (Supervised)
	JDMT	RICKARD	Judgment
	BNDE	RICKARD	Surety Bond Exonerated (Amount 10,000.00)
	NOTC	ROHRBACH	Notice of filing Additional Sentencing Material - in PSI folder
	NOTC	ROHRBACH	Notice of Filing Under Seal
	EVAL	ROHRBACH	Evaluation - AJI, in PSI folder
			Document sealed
9/14/2006	STAT	RICKARD	Case status changed: closed pending clerk action
9/20/2006	ORDR	RICKARD	Judgment And Sentencing Disposition
10/11/2006	NFTA	MORELAND	KCSO Notice Of Failure To Appear for jail
10/19/2006	RPTV	MORELAND	Report Of Violation
10/24/2006	WARB	ROHRBACH	Warrant Issued - Bench Bond amount: .00 Failure to Comply With Conditions of Probation- PV report dated 10-18-06 **NO BAIL ** ISSUED 10-25-06 Defendant: Gosch, Kirk Julliard
	STAT	ROHRBACH	Case status changed: Inactive
11/3/2006	HRSC	CARROLL	Hearing Scheduled (Arraignment/First Appearance 11/03/2006 02:00 PM)
	STAT	CARROLL	Case status changed: Reopened
	WART	CARROLL	Warrant Returned Failure to Comply With Conditions of Probation- PV report dated 10-18-06 ***** NO BAIL ***** Defendant: Gosch, Kirk Julliard
	HRHD	CARROLL	Hearing result for Arraignment/First Appearance held on 11/03/2006 02:00 PM: Hearing Held
11/9/2006	HRSC	ROHRBACH	Hearing Scheduled (Probation Violation - Admit/Deny 11/16/2006 10:00 AM)

State of Idaho vs. Kirk Julliard Gosch

Date	Code	User		Judge
11/9/2006		ROHRBACH	Notice of Hearing	Charles W. Hosack
11/14/2006		ROHRBACH	AMENDED Notice of Hearing	Charles W. Hosack
11/15/2006	STWD	MORELAND	Stipulation Re:substitution Of Counsel And Withdrawal Of Public Defender: Monica Brennan, private counsel, in place of Anne Taylor	Charles W. Hosack
11/20/2006	DENY	JOKELA	Hearing result for Probation Violation - Admit/Deny held on 11/20/2006 10:30 AM: Motion Denied	Charles W. Hosack
	HRSC	JOKELA	Hearing Scheduled (Evidentiary Hearing 12/06/2006 10:00 AM)	Charles W. Hosack
		JOKELA	Notice of Hearing	Charles W. Hosack
12/6/2006	INHD	ROHRBACH	Hearing result for Evidentiary Hearing held on 12/06/2006 10:00 AM: Interim Hearing Held	Charles W. Hosack
12/8/2006	HRSC	ROHRBACH	Hearing Scheduled (Probation Violation - Evidentiary/Disposition 12/14/2006 03:00 PM)	Charles W. Hosack
		ROHRBACH	Notice of Hearing	Charles W. Hosack
12/14/2006	HRHD	ROHRBACH	Hearing result for Probation Violation - Evidentiary/Disposition held on 12/14/2006 03:00 PM: Hearing Held	Charles W. Hosack
	HRSC	ROHRBACH	Hearing Scheduled (Probation Violation - Disposition 01/09/2007 03:00 PM)	Charles W. Hosack
12/15/2006		ROHRBACH	Notice of Hearing	Charles W. Hosack
1/9/2007	INHD	ROHRBACH	Hearing result for Probation Violation - Disposition held on 01/09/2007 03:00 PM: Interim Hearing Held	Charles W. Hosack
	HRSC	ROHRBACH	Hearing Scheduled (Probation Violation - Disposition 01/11/2007 11:00 AM)	Charles W. Hosack
1/11/2007	DPHR	ROHRBACH	Hearing result for Probation Violation - Disposition held on 01/11/2007 11:00 AM: Disposition With Hearing	Charles W. Hosack
	PTSO	ROHRBACH	Pretrial Settlement Offer	Charles W. Hosack
	NORA	ROHRBACH	Notice of Right to Appeal	Charles W. Hosack
1/12/2007	NOTC	ROHRBACH	Notice Regarding PSI	Charles W. Hosack
1/16/2007	SNIC	MOLLETT	Sentenced To Incarceration (I37-2732B(A)(1) Drug-trafficking In Marijuana) Confinement terms: Jail: 180 days. Discretionary: 90 days. Penitentiary determinate: 1 year. Penitentiary indeterminate: 4 years.	Charles W. Hosack
	SNIC	MOLLETT	Sentenced To Incarceration (I37-2732(A)(1)(A)-P/I Controlled Substance-poss With Intent Manu/deliver) Confinement terms: Jail: 180 days. Discretionary: 90 days. Penitentiary determinate: 1 year. Penitentiary indeterminate: 4 years.	Charles W. Hosack

State of Idaho vs. Kirk Julliard Gosch

Date	Code	User	Judge
1/16/2007	SNIC	MOLLETT	Sentenced To Incarceration (I37-2732(E) Controlled Substance-poss Marijuana More Than 3 Oz) Confinement terms: Jail: 180 days. Discretionary: 90 days. Penitentiary determinate: 1 year. Penitentiary indeterminate: 4 years.
	JDMT	MOLLETT	Judgment On Probation Violation
	STAT	MOLLETT	Case status changed: Closed pending clerk action
	SNMD	MOLLETT	Sentenced ModifiedSentence modified on 1/16/2007. (I37-2732B(A)(1) Drug-trafficking In Marijuana)
	SNMD	MOLLETT	Sentenced ModifiedSentence modified on 1/16/2007. (I37-2732(A)(1)(A)-P/I Controlled Substance-poss With Intent Manu/deliver)
	SNMD	MOLLETT	Sentenced ModifiedSentence modified on 1/16/2007. (I37-2732(E) Controlled Substance-poss Marijuana More Than 3 Oz)
4/10/2007	NIDE	JOKELA	Notice Of Intent To Destroy Exhibits
4/19/2007	NTWD	MORELAND	Notice Of Withdrawal
10/22/2007	MISC	ROHRBACH	Address update from Pardons & Parole
1/5/2010	ADMR	MEYER	Administrative assignment of Judge (batch process)
3/22/2011	SCAN	POOLE	Scanned
3/12/2013	ORDR	HAMILTON	Amended Judgment
3/13/2013	NOAP	MCCANDLESS	Notice Of Appearance Per Appointment
3/25/2013	APSC	OREILLY	Appealed To The Supreme Court
	MNPD	OREILLY	Motion For Appointment Of State Appellate Public Defender
4/3/2013	ORPD	LARSEN	Order For Appointment Of State Appellate Public Defender
4/19/2013	NAPL	MCCANDLESS	Notice Of Appeal Due Date From Supreme Court
4/30/2013	ANOA	POOLE	Amended Notice of Appeal
6/12/2013	MISC	MCCANDLESS	Reset Due Date from Supreme Court
6/20/2013	NLTR	CARROLL	Notice of Lodging Transcript - 306 Pages - JoAnn Schaller

STATE OF IDAHO

-VS-

Case # CRFOS-403

Charge (s) 37-2732BA

Kirk Gosch

Date 1/7/05

Time 2AM

Tape # 58726 / Log#

Judge Simpson

☐ Traffic ☒ 1st Appear. ☐ Disposition ☐ Other

APPEARANCES:

☒ Defendant 2120
☐ Defense Attorney

☒ Prosecuting Atty. Mr. Madsen
☐ Other

FAILURE TO APPEAR: Defendant having failed to appear, and good cause not shown for such absence,
IT IS ORDERED THAT:

☐ Bond Forfeited
☐ Bench warrant issued

☐ Referred to Prosecuting Attorney
☐ Bail Set \$

PROCEEDINGS & ADVISEMENT OF RIGHTS:

- ☒ Defendant is informed of the charges against him/her and all legal rights including the right to be represented by counsel. Defendant understands.
☒ Defendant advised of effect of guilty plea and maximum penalties, also penalties for subsequent violations. Defendant understands.
☐ Waived right to counsel
☒ Court appointed Public Defender Reimb. by
☐ Court denied court appointed counsel
☐ Matter continued
☐ Charge amended
☐ Notify the Court, in writing, of any address change.

PRELIMINARY HEARING:

☐ Statutory time waived
☐ Preliminary hearing waived

☒ Set preliminary hearing
☒ 14 days ☐ 21 days

ENTRY OF NOT GUILTY PLEA:

☐ Set for PTC/Jury Trial ☐ Set for court trial

ENTRY OF GUILTY PLEA:

- ☐ Enters plea freely and voluntarily with knowledge of consequences
☐ Plea of guilty accepted by the court
☐ Set for disposition
☐ Alcohol evaluation waived
☐ Defendant ordered to obtain alcohol evaluation prior to disposition date

BAIL:

☐ Released on own recognizance
☐ Remanded to the custody of the sheriff

☒ Bail set at 250,000
☐ Released on bond previously posted

OTHER:

Call
Review Charges and penalties.

Deanne Clausen

Deputy Clerk

A - lived here 12 yrs.

Q - appt PD.

A - friends & family may help.

PA - serious allegations. Maybe a flight risk.
150,000

A - lived here 10-12 yrs. going to College.
Unemployed. Lives w/ Mom & Dad.

Q - Wayne & Tradition
250,000.

State

Case #

Charge(s)

Storage World
Mini Storage

VS.

Date 1-7-05 Time 4:00 Courtroom (Chambers)

Tape # 58613 Judge Simpson

Court Reporter

Type of Proceeding

PC

Counsel

Party

Plaintiff

Defendant

For

For

For

For

Identifier

Phase of Case

Det Morgan ISP for search Storage Unit
112 W. Honeyuckle Unit B43

C Swears Jerry Morgan Det ISP 20 yrs
Post Certified

Yesterday had search warrant for a residence of
Kirk Gosch Kootenai Cty, Id
Several drug evidence para

456 grams para

Honey oil refined THC all in house
Gosch moving out of residence, putting belongings
in storage unit

Vehicles searched also

Kirk was mirandized, was going to Calif.

11974 N. Rimrock Rd

Unit B43 @ Storage World where he was taking
belongings

Contacted Storage World, he did rent unit B43

Purchased padlock & double locked the unit

Kirk said Key for this lock was in jeep

\$3000.00 cash, GPS, 2 way radios, scuba dry suit

Drug dog alerted on vehicle

Some items from house area

Pg. _____

Charmaine Mallett

In the Matter of

Case #

CR 05-403

Charge(s)

VS.

11974 N Rimrock Rd

Date 1-6-05 Time 12:25 Courtroom # 11

KC Idaho

Tape # 58177 Judge Swanstrom

Re: Kirk Gosch

Court Reporter

Type of Proceeding P.C SW

Counsel	Party	Plaintiff	Defendant
	For		
	For		
	For		
	For		

Identifier	Phase of Case
J	opens Court
C	Dureau W#1
W#1	Terry Morgan ISP Detective
	approx 2 years ago recd information re: Kirk Gosch being involved in smuggling marijuana K.C. from Canada. Did investigation.
	On 3/04/04 recd call from Border Patrol near Medallene Falls Washington. Vehicle stopped driven by Kerun Gosch who is Kirk's father - Kerun was arrested for possession of B.C. seed in spare tire of his car. B.C. seed is name for Mary from Canada. - plead guilty. Denied time in Wash.
	Again on 11/03/04 recd a call from RCMP.
	Kerun Gosch had rented a high-powered

Pg. 1

Pancy K Allen
Deputy Clerk

Identifier	Phase of Case
W#1	<p>small hole near the border. + was reported as lost had used cell phone call black in snow.</p> <p>Contacted the son + roommate they were not concerned</p> <p>Again few days later call from RCMP. the Dash located on west side of border.</p> <p>On 12/2/04 used information from Jason Felton Hayden Lake Police Dept. -</p>
2231	<p>Stopped Kirk Dash + cited for poss may + para.</p> <p>Also Kirk arrested on 10/3/03 for poss of para.</p> <p>P/U of garbage done approx 2 weeks ago from 11974 N Remrock Rd.</p> <p>Found several plastic baggies with corners cut off of corners in many distribution</p> <p>Some had white powder inside in them</p> <p>P/U garbage again earlier today 10:30 AM. at 11974 N Remrock Rd.</p>

DC 015 COURT MINUTES

Identifier	Phase of Case
W#1	found was. heat sealed plastic bags approx 1 yr x 1 yr. markings on bags A & B. these are used to mark grade of marijuana from Canada. Also found many items tested positive for marijuana Several large propane gas cylinders - used to make money off - explains two broken glass jars. tested positive THC Also several zip lock baggies strong odor of marijuana & green leafy debris inside
2398	Reg S/W. explains items searching for. apt 11974 N Remick Rd KC Mo. Single family home / Apt above a garage directly across from 11970 N Remick Rd East side of road.

**IDAHO STATE POLICE****TO:** KCPA**FROM:** Detective Terry Morgan
208-769-1433**SUBJECT:** PC Statement for Kirk Gosch and Brandon Capello, In Custody's**DATE:** January 7, 2005

On 1/6/05, during morning hours, Idaho State Police Detectives initiated surveillance on 11974 N. Rimrock Road, Hayden, Kootenai County, Idaho.

At approximately 12:02 p.m., Detective Carlock saw a white cargo style van arrive. A male subject later identified as Kyle McCormick got out of the van and went inside the residence.

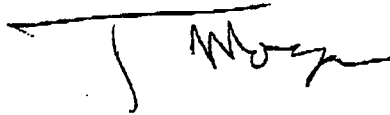
At approximately 12:06 p.m., Detective Carlock saw a male subject, later identified as Brandon Capello, exit the residence. Capello walked out to the area where the van and white pickup were parked. Seconds later, Capello returned with a flimsy, rectangular white bag of some sort and went back into the residence. The bag did not appear to contain anything and was still in a folded condition.

McCormick, Capello and another subject later identified as Kirk Gosch were all seen carrying various items from the residence to the three vehicles located on the premises. Gosch later told me that these three vehicles were either loaned to him or belonged to him.

At approximately 1:30 p.m., Idaho State Police Detectives and I served a search warrant on the premises of 11974 N. Rimrock Road, Hayden, Kootenai County, Idaho. Located in the vehicles was 456.5 grams of marijuana, a portion of which was tested with Becton Dickinson field test kit for marijuana, indicating a positive reaction; 187.4 grams of cocaine, which was tested with a Becton Dickinson test kit for cocaine, indicating a positive reaction; and approximately a half pound of a reddish colored chunky substance. All three substances were each contained in Ziplock style plastic bags and all three were contained in a white plastic kitchen garbage can style liner bag, similar to the one Capello was seen earlier retrieving. Also located inside the house, in plain view, were several devices used for the ingestion of marijuana. Several glass vials, which contained suspected "honey oil" (refined marijuana substance) were also located inside the residence in plain view.

Also seized from inside the residence were multiple empty glass vials, packaging materials, a bottle of MSM (commonly used as a cutting/bulking additive for cocaine distribution) and scales.

I respectfully request complaints be issued for Gosch and ~~Capelle~~ charging with violations of Idaho Codes 37-2732B, Trafficking in a schedule I controlled substance, Marijuana; and Trafficking in Cocaine, more than 28 grams, Idaho code 37-273BA

A handwritten signature in black ink, appearing to read "J. Morgan". The signature is written in a cursive style with a horizontal line above the name.

ORIGINAL

WILLIAM J. DOUGLAS
Prosecuting Attorney
501 Government Way/Box 9000
Coeur d'Alene, ID 83816-1971
Telephone: (208) 446-1800

ASSIGNED ATTORNEY
ARTHUR VERHAREN
Deputy Prosecuting Attorney

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED:

2005 JAN -7 PM 12:32

CLERK DISTRICT COURT
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,

Plaintiff,

vs.

KIRK JUIILLARD GOSCH,

DOB [REDACTED]

SSN: [REDACTED]

Defendant.

CASE NO. CR-F05- 403

**COMPLAINT -
CRIMINAL**

AGENCY CASE: ISP

_____ appeared personally before me, and being first duly sworn on oath,
complains that the above named defendant did commit the crime(s) of **COUNT I, TRAFFICKING
IN COCAINE**, a Felony, Idaho Code §37-2732B(a)(2), and **COUNT II, TRAFFICKING IN
MARIJUANA**, a Felony, Idaho Code §37-2732B(a)(1), committed as follows:

COUNT I

That the defendant, **KIRK JUIILLARD GOSCH**, on or about the 6th day of January, 2005,

**COMPLAINT -
CRIMINAL - 1**

in the County of Kootenai, State of Idaho, did knowingly possess twenty-eight (28) grams or more of cocaine, a Schedule II controlled substance, or of any mixture or substance containing a detectable amount of cocaine;

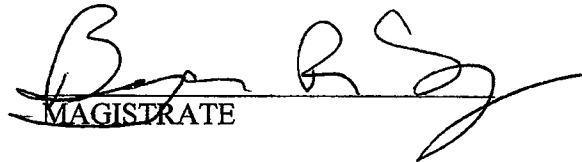
COUNT II

That the defendant, **KIRK JUILLARD GOSCH**, on or about the 6th day of January, 2005, in the County of Kootenai, State of Idaho, did knowingly possess in excess of one (1) pound of marijuana of marijuana, a Schedule I controlled substance, all of which is contrary to the form, force and effect of the statute in such case made and provided and against the peace and dignity of the People of the State of Idaho. Said Complainant therefore prays for proceedings according to law.

DATED this 7 day of JAN, 2005.


COMPLAINANT

SUBSCRIBED AND SWORN to before me this 7 day of Jan, 2005.


MAGISTRATE

COMPLAINT -
CRIMINAL - 2

FILED 1/7/05 AT _____ M.
CLERK OF THE DISTRICT COURT
BY Jeanne Clausen DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

APPLICATION FOR: Kirk Gosch
DEFENDANT / JUVENILE / CHILD)
BY _____)
DEFENDANT / PARENT / GUARDIAN)
DATE OF BIRTH [REDACTED])
SOC. SECURITY # [REDACTED])

CASE NO. CRF05-403

FINANCIAL STATEMENT AND ORDER

NOTE: If this application is being made on behalf of a juvenile, please answer the following questions as they apply to his/her parents or legal guardian.

I, the above named defendant, being first duly sworn on oath, depose and say in support of my request for court appointed counsel:

My current address is: P.O. Box 655 Hayden Id. 83835
(Street or P.O. Box) City State Zip Code

My current telephone number or message phone is: (208) 772-0956

That I have been charged with the crime of Trafficking
in the above entitled court and request the court to appoint counsel at county expense to represent me; that I agree, if ordered by the Court, to refund to said County such sum as the court may fix for the cost of my defense, upon such terms as the court may order.

BELOW IS A TRUE AND CORRECT STATEMENT OF MY FINANCIAL CONDITION:

1. EMPLOYMENT:

A. Employed: X yes ____ no B. Spouse Employed: ____ yes ____ no
C. If not employed, or self-employed, last date of employment _____
D. My employer is: Advanced Drywall / Rin Rock Drywall Inc.
Address: Emerald Estates / Hayden Id.

2. INCOME MONTHLY (Include income of spouse, if married):

Wages before deductions	\$ <u>600</u>	Other income: (Specify: Child Support, S.S., V.S., A.D.C., Food Stamps, etc.)	_____
Less Deductions	\$ <u>75</u>		
Net Monthly Wages	\$ <u>525</u>		\$ <u>0</u>

3. EXPENSES MONTHLY:

Rent or Mortgage Payment	\$ <u>250</u>	Child Care	\$ <u>0</u>
Utilities	\$ <u>0</u>	Recreation	\$ <u>0</u>
Clothing	\$ <u>100</u>	Medical	\$ <u>0</u>

3. EXPENSES MONTHLY (Continued):

Transportation	\$ 150	Insurance	\$ 90.00
School	\$ 0	Other: (Specify)	\$
Food	\$ 100		\$
DEBTS: Creditor	Chase Credit	Total \$	2000 \$ 0 per mo.
Creditor	Sears	Total \$	750 \$ 100 per mo.

4. ASSETS:

A. I (we) have cash on hand or in banks	\$ 34.00
B. I (we) own personal property valued at	\$ 10,000
C. I (we) own vehicle(s) valued at	\$ 5000
D. I (we) own real property valued at	\$ 0
E. I (we) own stocks, bonds, securities, or interest therein	\$ 0

5. THE FOLLOWING ALSO AFFECTS MY FINANCIAL CONDITION (Specify):

6. DEPENDENTS: ~~2~~ 1 self _____ spouse _____ children _____ other (specify) _____

(number) _____
 Subscribed and sworn to before me this 7th day of JAN, 2005.
 APPLICANT: _____
 NOTARY PUBLIC: _____
 NOTARY PUBLIC OFFICE: _____

The above named ~~X~~ defendant _____ parent _____ guardian appeared before the court on the aforesaid charge and requested the aid of counsel. The court having considered the foregoing, and having personally examined the applicant; ~~X~~ ORDERS _____ DENIES the appointment of the service of counsel.

The applicant is ordered to pay \$ _____ monthly beginning _____, 200 _____ for the cost of appointed counsel. Payments are to continue until _____

[] notified by the court that no further amount is due.
 [] the sum of \$ _____ has been paid.

THE APPLICANT IS ORDERED TO PAY REIMBURSEMENT FOR THE COST OF APPOINTED COUNSEL AT THE CONCLUSION OF THE CASE; THIS AMOUNT MAY BE IN ADDITION TO ANY SUMS ORDERED ABOVE.

ENTERED this 7 day of Jan., 2005.

Custody Status: ~~X~~ In _____ Out _____

Bond \$ 250,000

JUDGE

Copies To:

~~X~~ Prosecuting Attorney KC

[] Public Defender

1/7/05

Date

Deputy Clerk

Case # CR 05 403

Charge(s) _____

Gosch, Kirk vs.

Date 1-18-05 Time 8:30 Courtroom # 7

Tape # 58541 Judge Swanson

Court Reporter _____

Type of Proceeding Prelim

Counsel

Party

Plaintiff

Defendant

Verharen

For

For

Anne Miller

For

For

Identifier

Phase of Case

910 J. Opens -

DA req. cont.

PA no obj.

J. reset - time waived

ORIGINAL

Anne C. Taylor, Deputy Public Defender
Office of the Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, ID 83814
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 5836

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED:

2005 JAN 14 PM 3: 22

CLERK DISTRICT COURT
Cindy E. Bell
DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,)	
	)	CASE NUMBER CR-05-0000403
Plaintiff,	)	Fel
)	
V.	)	NOTICE OF APPEARANCE
	)	REQUEST FOR TIMELY
KIRK J. GOSCH,	)	PRELIMINARY HEARING,
	)	MOTION FOR BOND REDUCTION
	)	& NOTICE OF HEARING
Defendant.)	

COMES NOW, the Office of the Kootenai County Public Defender, and pursuant to court appointment hereby appears for and on behalf of the above named defendant in the above entitled matter, and requests that a preliminary hearing be scheduled in accordance with the time limits set forth in Idaho Criminal Rule 5.1.

Counsel hereby moves for reduction of the bond set in this matter on the grounds that it is excessive, and further, **notice is hereby given** that counsel will present argument in support of the motion to reduce bond at the time of the preliminary hearing scheduled in this matter if the defendant is in custody.

Notice is given that the Defendant herewith asserts all rights accorded him or her under the Fifth, Sixth, and Fourteenth Amendments to the Constitution of the United States and under

**NOTICE OF APPEARANCE, REQUEST FOR TIMELY PRELIMINARY HEARING,
MOTION FOR BOND REDUCTION & NOTICE OF HEARING**

Page 1


Article I, § 13 of the Constitution of the State of Idaho and all prophylactic measures imposed upon the State pursuant to said constitutional provisions; including, but not necessarily limited to, the right to remain silent and the right to counsel. NO AGENT OF THE STATE OR PERSON ACTING IN SUCH CAPACITY IS TO QUESTION THE DEFENDANT IN REGARD TO ANY ACT, WHETHER CHARGED OR UNCHARGED.

Notice is further given that the Defendant herewith demands and asserts all State and federal statutory and constitutional rights to speedy trial of this matter.

DATED this 13 day of January, 2005.

OFFICE OF THE KOOTENAI
COUNTY PUBLIC DEFENDER

BY:


ANNE C TAYLOR
DEPUTY PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same in the interoffice mailbox on the 14 day of January, 2005, addressed to:

Kootenai County Prosecutor



**NOTICE OF APPEARANCE, REQUEST FOR TIMELY PRELIMINARY HEARING,
MOTION FOR BOND REDUCTION & NOTICE OF HEARING**

Page 2

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED:

2005 JAN 14 PM 4:32

RETURN ON WARRANT

STATE OF IDAHO)

County of Kootenai)

)
) ss.
)

KIRK GOSCH RESIDENCE
11974 RIMROCK RD
HAYDEN ID. 7

CLERK DISTRICT COURT
Barbara Jenkins
DEPUTY

I, the undersigned law enforcement officer, received the above search warrant on the 6
day of JAN, 2005, and executed the same on the 6 day of
JAN, 2005, at 130 o'clock P.m.

CR05-403

1. ~~NONE OF THE ABOVE DESCRIBED PROPERTY WAS FOUND ON/IN THE
ABOVE DESCRIBED PREMISES/VEHICLE.~~

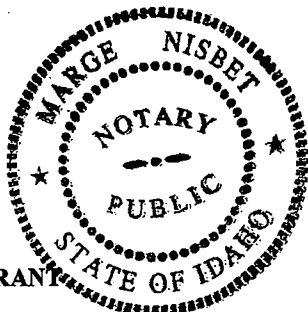
2. I DISCOVERED AND SEIZED THE PERSONAL PROPERTY DESCRIBED IN THE
ATTACHED WRITTEN INVENTORY. THAT WRITTEN INVENTORY WAS MADE IN THE
PRESENCE OF T Morgan AND
PAUL BERGER (the applicant for the above search warrant) AND IS A
TRUE AND DETAILED DESCRIPTION OF ALL PROPERTY TAKEN BY ME PURSUANT TO
THE ABOVE SEARCH WARRANT.

I LEFT A COPY OF THE ABOVE SEARCH WARRANT AND A RECEIPT FOR THE
PROPERTY SEIZED WITH THE PERSON FROM WHOM IT WAS TAKEN/AT THE PLACE
WHERE THE PROPERTY WAS FOUND.

DATED this 6th day of JAN, 2005

T Morgan
Law Enforcement Officer

SUBSCRIBED AND SWORN to before me this 14th day of January,
2005. 5 MN



SEARCH WARRANT

Marge Nisbet
Notary Public for Idaho

Commission expires: 6-1-10

Residing At: Hayden, Idaho

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

County of Kootenai, STATE OF IDAHO, to:

__Detective Terry Morgan, or a sheriff, constable, marshal, policeman or other peace officer in Kootenai County.

Proof of testimony under oath having been presented to me by Detective Terry Morgan that there is probable cause to believe that certain property, to-wit: Controlled substances to include but not limited to marijuana; paraphernalia associated with the consumption of illegal drugs, to include but not limited to pipes (manufactured as smoking devices and/or improvised to perform that function), hemostats, rolling papers, syringes and snort tubes used for the ingestion of controlled substances; paraphernalia and or items used for packaging, weighing and distributing said controlled substance, in particular, marijuana, including but not limited to scales, baggies, large duffle style bags, backpacks, tape and other items used in the distribution and /or consumption of controlled substances, including firearms and knives, maps, ghillie suits, police scanners, camouflage clothing and bags, two-way radios, bear spray repellant; records relating to the transportation, ordering,

1

possession, sale, transfer and importation of controlled substances, in particular marijuana, including but not limited to books notebooks, ledgers, checkbook ledgers, handwritten notes, journals, calendars, receipts, electronic recording media and the like; records relating to the illegal possession and distribution of marijuana and controlled substances and identities of as yet unknown co-conspirators, to include but not limited to address books, phone billings, letters, correspondence, cryptic notes, maps, membership records and rosters and records to include any computer records maintained on magnetic media; books, records, invoices, receipts, records of real estate transactions, purchase, lease or rental agreements, utility and telephone bills, pager bills, records reflecting ownership of motor vehicles, keys to vehicles, bank statements and related records, passbooks, money drafts letters of credit, money orders, bank drafts, pay stubs, tax statements, cashier's checks, bank checks, safe deposit box keys, money wrappers, and other items evidencing the dominion and control over assets in the residence, the residence itself, and otherwise linking the defendant to items used in any illegal narcotics transactions; records showing employment or lack of employment of the suspect or reflecting income or expense including but not limited to items listed in the paragraph above; U. S., Canadian and other currency, precious metals, jewelry, and personal properties obtained as a result of the manufacture and/or sales of illegal controlled substances in particular marijuana; address and/or telephone books, telephone bills, "Rolodex" type indices and papers reflecting names, address, telephone numbers, pager numbers fax numbers and/or telex numbers of co-conspirators, sources of supply, customers, financial institutions, and other individuals or businesses with whom a financial relationship exists; communication devices including pagers and mobile telephones; cameras, film, digital media for storage, video tapes and photographs; along with computers, computer hard drives, and authority to access the hard drive and any storage device used

SEARCH WARRANT

2

STATE OF IDAHO
COUNTY OF KOOTENAI

FILED

2005 JAN 14 PM 4:32
CLERK DISTRICT COURT

to record and/or store any digital information, i.e., floppy disks, magnetic tapes, zip drives, hard drives, compact discs and other storage means. Which property are the fruits of the crime of

Trafficking in Marijuana 37-2732B(a); and Conspiracy to Traffick Marijuana 37-2732B(b)

and is presently located at the premises of 11974 North Rimrock Road, further described as a single family dwelling, or apartment located above a garage being located directly west of 11970 N Rimrock Road, having an entry door on the southside of the structure which is the only entrance to the apartment. To get to the apartment you travel north on northwest blvd to US 95. Travel north on US 95 to Lancaster, turn east onto Lancaster and drive to Rimrock Road. Turn south on Rimrock

Road to the address. The House sits to the east of Rimrock Road. ALSO BLACK 1996 JEEP K237080 LOCATED IN DRIVEWAY R/O KIRK GOSCH.

WHEREFORE, you are commanded to:

1. Forthwith search the above described premises/vehicle within 24 day(s)/hour(s), for the above described property, which search shall be conducted in the daytime/at anytime day or night.

2. If the above described property, or any part thereof, is found, then seize said property and leave a copy of this warrant, and a receipt that describes in detail the property seized, with the person from whom it was taken, or in the place where said property was found.

3. If the above-described property, or any part thereof, is found, then prepare a written inventory, describing the property in detail, in the presence of the person from whom it was taken, or in that person's absence, in the presence of some credible person.

4. Return this search warrant and the written inventory to any magistrate, at the Kootenai County Courthouse at Government Way and Garden Avenue, in the City of Coeur d'Alene, Idaho.

DATED this 6th day of January, 2005, at 6:55 o'clock 9 a.m.

Don R. Swanton
MAGISTRATE

SEARCH WARRANT

3

STATE OF IDAHO } SS
COUNTY OF KOOTENAI }
FILED:

2005 JAN 14 PM 4:32

WILLIAM J. DOUGLAS
Prosecuting Attorney
501 Govt. Way/Box 9000
Coeur d'Alene, ID 83816-1971
Telephone: (208) 769-4465

CLERK DISTRICT COURT

Barbara Watkins
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)

Plaintiff,
KIRK GOSCH RESIDENCE
vs. 11974 RIMROCK RD.
HAYDEN, ID
RE: K237080 BLACK JEEP
R/O KIRK GOSCH)

Case No. CR-

INVENTORY OF SEIZED
PROPERTY

STATE OF IDAHO)

County of Kootenai)

) ss.

SEE ATTACHED LIST

DATED this 14 day of JAN, 2005

T Morgan
Signature

Signature

I, T Morgan, the officer by whom the attached search warrant was
executed do swear that the above inventory contains a true and detailed account of all the property
taken by me on that warrant.

SUBSCRIBED AND SWORN
Janey, 2005

to before me this 14 day of

Scott Wagner
MAGISTRATE

SEARCH WARRANT

5

EVIDENCE/PROPERTY RECEIPT CONTINUATION

Case Number _____

D = Destroyed, E = Evidence, P = Property

EXHIBIT	D/ E/ P	DESCRIPTION OF ITEMS	LOCATION SEIZED
	E	goo substance from Kitchen ash tray	
	E	big Puncture Seal can (false bottom)	on top safe by
		several vials of honey oil	sink
	E	250 ct Centrum bottle w/ mj seeds	Bathroom shelf above sink
	E	\$3000.00 U.S. Currency, 1 wallet and contents, ledger	black jeep driver side door pocket
	E	Backpack w/ misc. camo ft. clothing and contents, radios	black jeep, rear cargo area
	E	multiple butane refills	under Kitchen sink
	E	broken canning jar from outside garbage	garbage
	E	cordless phone	Kitchen counter
	E	Misc. papers, receipts credit report	Kitchen cupboard above stove
	E	Camouflage pants	from bag next to downstairs closet
	E	white plastic bag cont 2 Ziplock bags w/ susp marijuana, one ziplock w/ red chunk substance, one ziplock w/ white powder substance (susp. cocaine)	white Suzuki Estee
	E	Misc. parking, bank info, receipt	outside garbage

Officer Signature

/ Serial No.

Witness

Case Number _____

[illegible]

Officer Signature

2711
/ Serial No.

Witness



(Patrol Use Only)

**EVIDENCE
PROPERTY**☐
☐

Evidence/Property Receipt

County <i>Kootenai</i>	Date of occurrence <i>1-6-05</i>	Time of occurrence <i>1:30 p.m.</i>	Case No.	Violation
Defendant/Owner <i>Kirk Gosch</i>			DOB	
Address <i>11974 N. Rimrock, Hayden, ID. POB 6555, Hayden, ID.</i>			Phone <i>704-2229 OR 83835 444 9332</i>	

Taken From:

☐ Person ☐ Vehicle ☐ Structure ☐ Other

The following items were seized pursuant to an arrest or search of the following:

LOCATED: *11974 N. Rimrock, Hayden, ID. and black Jeep ID. license K237080, a white Suzuki Esteem ID. license 192686, a white GMC truck ID. license K224943*

*D = Destroyed, E = Evidence, P = Property

EXHIBIT	*D/ E/ P	DESCRIPTION OF ITEMS	LOCATION FOUND
1	E	541.00 U.S. Currency	Kitchen Cupboard, upper w of stove
	E	Ziplock baggy w/ susp MJ	red plastic cup left of Kitchen stove
	E	Bottom of glass jar	Kitchen stove burner
	E	small glass vial, brown, w/susp MJ	Kitchen counter top
	E	" "	Kitchen counter top
	E	cell phones, pager	Kitchen counter top area
	E	1 can bear spray	above kitchen stove
	E	scanner	above Kitchen counter
	E	packaging materials	above stove in cupboard and chair
	E	coffee grinder	Kitchen counter
	E	1 bottle MSM	Kitchen cabinet above refrigerator

Officer Signature

/ Serial Number

Witness (Inv. Use Only)

STATE OF IDAHO } SS
COUNTY OF KOOTENAI }
FILED:

2005 JAN 14 PM 4:32

WILLIAM J. DOUGLAS
Prosecuting Attorney
501 Govt. Way/Box 9000
Coeur d'Alene, ID 83816-1971
Telephone: (208) 769-4465

CLERK DISTRICT COURT
Barbara Batheis
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,

Case No. CR-

KIRK GOSCH RES Plaintiff,
vs. 11974 N RIMROCK RD
HAUDEN ID &
RE: JEEP, 1996 BLACK K237080
BY KIRK GOSCH

ORDER PRESERVING
SEIZED PROPERTY

TERRY MORGAN, having returned to the Court a search warrant issued on
the 6 day of JAN, 2005, and having brought to the Court the copy of the
warrant and written inventory of the property seized pursuant to that warrant;

WHEREFORE, IT IS HEREBY ORDERED that TERRY MORGAN shall deliver
or cause to be delivered the inventory of seized property referred to the above
to: CDA ISP DETECTIVE OFFICE, 250 W BLVD #108 CDA for the purpose of
preserving said property for use as evidence or until further order of this Court.

IT IS FURTHER ORDERED that said property, or any part thereof, may be delivered to any
person or laboratory or laboratories for the purpose of conducting or obtaining any tests, analysis or
identification of said property which is deemed necessary by said Peace Officer or the Prosecuting
Attorney of Kootenai County or his deputies, without further order of this Court.

DATED this 14 day of January, 2003.

Scott Wagner
MAGISTRATE

SEARCH WARRANT

6

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED:

2005 JAN 14 PM 4:33

RETURN ON WARRANT

CLERK DISTRICT COURT

STATE OF IDAHO)

County of Kootenai)

)
) ss.
)

STORAGE WORLD MINE STORAGE
UNIT B43, 112 W HONEY SUCKLE
HAYDEN ID.

I, the undersigned law enforcement officer, received the above search warrant on the 7
day of JAN, 2005, and executed the same on the 10 day of
JAN, 2005, at 1025 o'clock A.m.

1. NONE OF THE ABOVE DESCRIBED PROPERTY WAS FOUND ~~ON~~/IN THE
ABOVE DESCRIBED ~~PREMISES/VEHICLE~~.

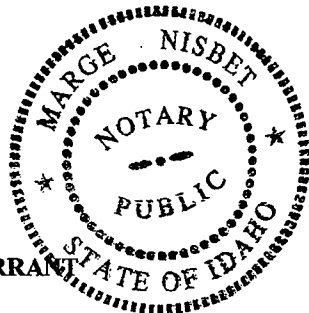
2. I DISCOVERED AND SEIZED THE PERSONAL PROPERTY DESCRIBED IN THE
ATTACHED WRITTEN INVENTORY. THAT WRITTEN INVENTORY WAS MADE IN THE
PRESENCE OF _____ AND
_____ (the applicant for the above search warrant) AND IS A
TRUE AND DETAILED DESCRIPTION OF ALL PROPERTY TAKEN BY ME PURSUANT TO
THE ABOVE SEARCH WARRANT.

I LEFT A COPY OF THE ABOVE SEARCH WARRANT AND A RECEIPT FOR THE
PROPERTY SEIZED ~~WITH THE PERSON FROM WHOM IT WAS TAKEN~~/AT THE PLACE
WHERE THE PROPERTY WAS FOUND. (AT THE MAIN OFFICE)

DATED this 14 day of JAN, 2005

[Signature]
Law Enforcement Officer

SUBSCRIBED AND SWORN to before me this 14th day of January,
2005. 2 MN



SEARCH WARRANT

[Signature]
Notary Public for Idaho

Commission expires: 6-1-10

Residing At: Hayden
Lake, ID

WILLIAM J. DOUGLAS
Prosecuting Attorney
501 Govt. Way/Box 9000
Coeur d'Alene, ID 83816-1971
Telephone: (208) 769-4465

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,

Plaintiff,

STORAGE WORLD
MINI STORAGE
112 W HONEY SUCKLE HAYDEN ID
vs. KOOTENAI CO ID.
UNIT # B 43

Kootenai County, Idaho

Case No. CR-

**SEARCH
WARRANT**

County of Kootenai, STATE OF IDAHO, to:

Detective Terry Morgan, or a sheriff, constable, marshal, policeman or other peace officer in
Kootenai County.

Proof of testimony under oath having been presented to me by Detective Terry Morgan that
there is probable cause to believe that certain property, to-wit: Controlled substances to include but
not limited to marijuana and cocaine; paraphernalia associated with the consumption of illegal drugs
to include but not limited to pipes (manufactured as smoking devices and/or improvised to perform
that function), hemostats, heating instruments, rolling papers, syringes and snort tubes used for the
ingestion of controlled substances; paraphernalia and or items used for packaging, weighing and
distributing said controlled substance, in particular, marijuana and cocaine, including but not limited
to scales, baggies, large duffle style bags, plastic bags, glass vials, backpacks, tape and other items
used in the distribution and /or consumption of controlled substances, including but not limited to:
firearms and knives, maps, ghillie suits, police scanners, camouflage clothing and bags, two-way

SEARCH WARRANT

1

radios, bear spray repellant; records relating to the transportation, ordering, possession, sale, distribution, transfer and importation of controlled substances, in particular marijuana and cocaine, including but not limited to books, notebooks, ledgers, customer ledgers, source of supply ledgers, checkbook ledgers, handwritten notes, journals, calendars, receipts, electronic recording media and the like, address books, telephone bills and books, letters, correspondence, cryptic notes, maps, membership records, invoices, records of real estate transactions, purchase, lease or rental agreements, utility bills, pager bills, records reflecting ownership of motor vehicles, keys to vehicles, bank and or financial institution statements and related records, passbooks, money drafts letters of credit, money orders, bank drafts, pay stubs, tax statements, cashier's checks, bank checks, safe deposit box keys, money wrappers, and other items evidencing the dominion and control over assets, and otherwise linking the defendant to items used in any illegal narcotics transactions, records showing employment or lack of employment of the suspect or reflecting income or expense, communication devices including pagers and mobile telephones; cameras, film, digital media for storage, video tapes and photographs; along with computers, computer hard drives, and authority to access the hard drive and any storage device used to record and/or store any digital information, i.e., floppy disks, magnetic tapes, zip drives, hard drives, compact discs and other storage means, U. S. and Canadian and other currency, and personal properties obtained as a result of the manufacture and/or sales of illegal controlled substances in particular marijuana and cocaine. Which property are the fruits of the crime of Trafficking in Marijuana 37-2732B(a); and Conspiracy to Traffick Marijuana 37-2732B and/or Trafficking in Cocaine 37-27-32 BA

and is presently located at the premises described as follows: *NONUS AS TO HONEYSUCKLE AVE
E ON HONEYSUCKLE TO STORAGE WORLD, LOCATED ON S SIDE.
THE BUILDING IS LOCATED AT THE S.E. CORNER OF THE
LOCATION AND IS MARKED B-43*

SEARCH WARRANT

2

Description continued:

WHEREFORE, you are commanded to:

1. Forthwith search the above described premises/vehicle within 72 day(s)/hour(s) for the above described property, which search shall be conducted in the daytime/at anytime day or night.

2. If the above described property, or any part thereof, is found, then seize said property and leave a copy of this warrant, and a receipt that describes in detail the property seized, with the person from whom it was taken, or in the place where said property was found.

3. If the above-described property, or any part thereof, is found, then prepare a written inventory, describing the property in detail, in the presence of the person from whom it was taken, or in that person's absence, in the presence of some credible person.

4. Return this search warrant and the written inventory to any magistrate, at the Kootenai County Courthouse at Government Way and Garden Avenue, in the City of Coeur d'Alene, Idaho.

DATED this 7 day of Jan., 2002, at 4:05 o'clock P.m.

Bay R S
MAGISTRATE

SEARCH WARRANT

3

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED:

2005 JAN 14 PM 4:33

WILLIAM J. DOUGLAS
Prosecuting Attorney
501 Govt. Way/Box 9000
Coeur d'Alene, ID 83816-1971
Telephone: (208) 769-4465

CLERK DISTRICT COURT

Barbara Salinas
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)
)
) Plaintiff,)
)
) STORAGE WORLD)
) vs. MINI STORAGE UNIT BAS)
) 112 W HONEYSUCKLE)
) RE: HAYDEN ID.)
)

Case No. CR-

INVENTORY OF SEIZED
PROPERTY

STATE OF IDAHO)
) ss.
County of Kootenai)

NO PROPERTY TAKEN

DATED this 14 day of JAN, 2005

T. Morgan
Signature

Signature

I, TERRY MORGAN, the officer by whom the attached search warrant was
executed do swear that the above inventory contains a true and detailed account of all the property
taken by me on that warrant.

T. Morgan

SUBSCRIBED AND SWORN to before me this 14 day of
January, 2005.

Scott Wagner
MAGISTRATE

SEARCH WARRANT

5

(Patrol Use Only)

**EVIDENCE
PROPERTY**

Evidence/Property Receipt

County <i>Kootenai</i>	Date of occurrence <i>01-10-05</i>	Time of occurrence <i>10:25 A.M.</i>	Case No. <i>2004-1002</i>	Violation <i>Trafficking</i>
Defendant/Owner <i>Kirk Gosch</i>				DOB
Address <i>11974 N. Rimrock Rd. Hayden, Kootenai Co, ID</i>				Phone

Taken From:

☐ Person ☐ Vehicle ☐ Structure ☐ Other

The following items were seized pursuant to an arrest or search of the following:

LOCATED: Storage World Unit B-43, 112 W. Honeysuckle Ave,
Hayden, Kootenai Co., Id.

*D = Destroyed, E = Evidence, P = Property

[illegible]

Officer Signature

/ Serial Number

Witness (Inv. Use Only)

ORIGINAL

WILLIAM J. DOUGLAS
Prosecuting Attorney
501 Government Way/Box 9000
Coeur d'Alene, ID 83816-1971
Telephone: (208) 446-1800

ASSIGNED ATTORNEY
ARTHUR VERHAREN
Deputy Prosecuting Attorney

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED:

2005 JAN 27 AM 10:29

CLERK DISTRICT COURT

[Signature]
DEPUTY
JH

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)
)
Plaintiff,)
)
vs.)
)
KIRK JULLIARD GOSCH,)
DOB [REDACTED])
SSN: [REDACTED])
)
Defendant.)
_____)

CASE NO. CR-F05-403

**AMENDED COMPLAINT -
CRIMINAL**

AGENCY CASE: ISP

_____ appeared personally before me, and being first duly sworn on oath,
complains that the above named defendant did commit the crime(s) of **COUNT I, TRAFFICKING
IN COCAINE**, a Felony, Idaho Code §37-2732B(a)(2), **COUNT II, MANUFACTURING A
CONTROLLED SUBSTANCE**, a Felony, Idaho Code §37-2732(a), **COUNT III, POSSESSION**

AMENDED COMPLAINT CRIMINAL - 1

OF A CONTROLLED SUBSTANCE WITH THE INTENT TO DELIVER, a Felony, Idaho Code §37-2732(a), and **COUNT IV, POSSESSION OF MARIJUANA IN EXCESS OF THREE OUNCES**, a Felony, Idaho Code §37-2732(e), committed as follows:

COUNT I

That the defendant, **KIRK JUILLARD GOSCH**, on or about the 6th day of January, 2005, in the County of Kootenai, State of Idaho, did knowingly possess twenty-eight (28) grams or more of cocaine, a Schedule II controlled substance, or of any mixture or substance containing a detectable amount of cocaine;

COUNT II

That the defendant, **KIRK JUILLARD GOSCH**, on or about the 6th day of January, 2005, in the County of Kootenai, State of Idaho, did unlawfully manufacture a controlled substance, to-wit: Marijuana, a Schedule I controlled substance, by compounding or converting or processing marijuana into honey oil;

COUNT III

That the defendant, **KIRK JUILLARD GOSCH**, on or about the 6th day of January, 2005, in the County of Kootenai, State of Idaho, did unlawfully possess a controlled substance, to-wit: Marijuana, a Schedule I controlled substance, with the intent to deliver the aforementioned controlled substance;

COUNT IV

That the defendant, **KIRK JUILLARD GOSCH**, on or about the 6th day of January, 2005, in the County of Kootenai, State of Idaho, did unlawfully possess a controlled substance, to-wit: Marijuana, a Schedule I controlled substance, in an amount in excess of three (3) ounces, all of which is contrary to the form, force and effect of the statute in such case made and provided and

AMENDED COMPLAINT CRIMINAL - 2

against the peace and dignity of the People of the State of Idaho. Said Complainant therefore prays
for proceedings according to law.

DATED this 26 day of January, 2005.


COMPLAINANT

AMENDED COMPLAINT CRIMINAL - 3

State

Case #

cr 08-403

Charge(s)

VS.

Kirk Bosch

Date 2-1-05 Time 8:30A Courtroom # 11

Tape # 59043 Judge Simpson

Court Reporter

Type of Proceeding

PH

Counsel

Party

Plaintiff

Defendant

R. B. Bingham For

A. Taylor For

A. Taylor For

A. Taylor For

Identifier

Phase of Case

1530 call case

350 rto

PA 5 witnesses

cont for 2:00p

tape 59
286

recalls

2051

WA

Def waives PH

Bound in Dist

offer open 14 days

Mr. Ver Haven's

Def waives all

Waives PH

Grass Des Bound Over Dist Ct

2160

Pg.

FILED 2-1-05 2:45 PM
CLERK OF THE DISTRICT COURT
BY Nancy Munoz DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO

vs

KIRK JUILLARD GOSCH

ORDER ☒ HOLDING DEFENDANT

☐ DISMISSING CASE

CASE # CRF 05-403

Charge IC37-2732B(A) (2) COUNT I, TRAFFICKING IN COCAINE

IC37-2732B(A) (1) COUNT II, TRAFFICKING IN MARIJUANA

Amended to _____

☐ Dismissed - insufficient evidence to hold defendant to answer charge(s). Bond exonerated.

(Specify dismissed charge(s) if other charges still pending.)

- ☒ Preliminary hearing having been waived by the defendant on the above listed charge(s),
☐ Preliminary hearing having been held in the above entitled matter, and it appearing to me that the offense(s) set forth above has / have been committed, and there is sufficient cause to believe the named defendant is guilty thereof,

IT IS HEREBY ORDERED that the defendant is held to answer the above charge(s) and is bound over to District Court. The Prosecuting Attorney shall file an Information that includes all charges under this case number.

IT IS FURTHER ORDERED that the defendant be admitted to bail in the amount of \$ _____ and is committed to the custody of the Kootenai County Sheriff pending the giving of such bail.

- ☐ Defendant was advised of the charges and potential penalties and of defendant's rights, and having waived his/her constitutional rights to: a) trial by jury; b) remain silent; and c) confront witnesses, thereafter pled guilty to the charges contained in the Information filed by the Prosecuting Attorney.

IT IS FURTHER ORDERED that not later than **14 days** after the date of this order, Defendant shall enter and file a written plea which states: the Defendant's true name, age, education and literacy levels; Defendant's rights to trial and counsel and any waiver of such rights; the offense or offenses of which Defendant is charged together with the minimum and maximum sentence for each charge; and Defendant's plea to each charge, the estimated time necessary for trial, if any; Defendant's current custody status; and Defendant's current physical residence address, mailing address and telephone number. **A copy of the Defendant's written plea shall be delivered to the assigned judge's resident chambers. Failure to timely file a written plea shall be a basis to revoke bond or release and issue a bench warrant.**

IT IS FURTHER ORDERED that all pretrial motions in this case shall be filed not later than **42 days** after the date of this order unless ordered otherwise. All such pretrial motions in this matter shall be accompanied by a brief in support of the motion, and a notice of hearing for a date scheduled through the Court.

THIS CASE IS ASSIGNED TO JUDGE Hosack.

DATED this 1 day of Feb, 20 05.

Copies To: ☒ Pro ☒ Def. Atty ☐ Defendant ☐ Assigned District Judge
☒ Jail (if in custody)
Date 2-1-05 Deputy Clerk Nancy Munoz
Judge B. R. S.

ORIGINAL

Anne C. Taylor, Deputy Public Defender
Office of the Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83814
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 5836

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED:

2005 FEB -4 PM 4: 53

CLERK DISTRICT COURT
[Signature]
DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,)	
)	
Plaintiff,	)	CASE NUMBER CR-05-0000403
	)	Fel
V.)	
	)	STIPULATED MOTION FOR
KIRK J. GOSCH,	)	REDUCTION OF BOND
)	
Defendant.)	
_____)	

COMES NOW, the parties, by and through their attorneys, stipulate and hereby move the Court for its Order reducing the bond in this matter.

This motion is made pursuant to the 8th and 14th amendments of the U.S. Constitution; Article I, §§ 6 and 13 of the Idaho Constitution; and I.C.R., R.46.

This motion is made on the grounds that the parties have stipulated to the reduction.

DATED this 4th day of February, 2005.

NO OBJECTION

OFFICE OF THE KOOTENAI
COUNTY PUBLIC DEFENDER

Stipulated
Per message on 2/4/2005
ART VERHAREN
DEPUTY PROSECUTOR

BY: *[Signature]*
for ANNE C TAYLOR
DEPUTY PUBLIC DEFENDER

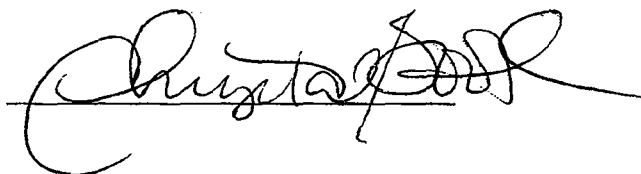
STIPULATED MOTION FOR BOND REDUCTION

Page 1

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same in the interoffice mailbox on the 24th day of February, 2005, addressed to:

Kootenai County Prosecutor

A handwritten signature in black ink, appearing to read "Krista J. Dorr", written over a horizontal line.

ORIGINAL

Anne C. Taylor, Deputy Public Defender
Office of the Kootenai County Public Defender
PO Box 9000
SCoeur d'Alene, Idaho 83814
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 5836

STATE OF IDAHO } SS
COUNTY OF KOOTENAI
FILED: 2-4-05
AT 4:50 O'CLOCK 0 M
CLERK, DISTRICT COURT
Ann Taylor
DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,

Plaintiff,

V.

KIRK J. GOSCH,

Defendant.

CASE NUMBER CR-05-0000403
Fel

ORDER TO REDUCE BOND

The Court having before it the Stipulated Motion for Bond Reduction and good cause appearing, now, therefore

IT IS HEREBY ORDERED that bond in this matter is reduced to \$10,000.00.

DATED this 4 day of February, 2005.

Charles W. Hosack
CHARLES W. HOSACK

CLERK'S CERTIFICATE

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same in the interoffice mailbox on the 4 day of February, 2005 addressed to:

Kootenai County Jail (by fax)
Kootenai County Public Defender (fax)
Kootenai County Prosecutor (fax)

Ann Taylor

ORDER TO REDUCE BOND

Page 1

2005 FEB -7 PM 12: 07

WAIVER OF EXTRADITION OF BAIL OR RELEASE

CLERK DISTRICT COURT
DEPUTY

NAME: KIRK J. GOSCH COURT DOCKET NUMBER F05-0000403

I, KJG, hereby knowingly willingly, and voluntarily execute this Waiver of Extradition as a condition of my release from the custody of the Kootenai county Sheriff's Department. I make the following statements, under oath, in support of this Waiver of Extradition.

1. KJG My name: Kirk Julliard Gosch
2. KJG My date of birth: [REDACTED]
3. KJG My social security numb [REDACTED]
4. KJG I have been arrested for, or charged with, a criminal offense in the State of Idaho. The specific offense(s) that I have been charged with are:

Traciffing

5. KJG I understand that as a condition of bail or release on the above charges that I am agreeing to waive extradition to the state of Idaho for any purpose connected with the above-entitled charges.
6. KJG I understand that I am not required to execute this Waiver of Extradition.
7. KJG I understand by executing these waivers, I am agreeing to waive any and all rights that I may now, or hereafter, possess in this or any other state in order to challenge the lawfulness or extradition back to the State of Idaho on the charges listed above.
8. KJG I understand that I normally would have the right to appear before a judge in another state in order to challenge my return to the State of Idaho.
9. KJG I understand that I would have the right to an attorney to represent me in another state to challenge my return to the State of Idaho.
10. KJG I understand that I would have the right to an attorney to represent me at all stages of these proceedings and that if I could not afford one, a court appointed attorney would be provided to act on my behalf at no expense to me.
11. KJG I understand that I have the right to require the issuance of a formal Governor's Warrant of Extradition to be submitted before I am transported back to Idaho.
12. KJG I understand that I have right to have the court set a bail amount.
13. KJG I understand that I have the right to test the legality of my arrest.
14. KJG I understand that I have the right to challenge the extradition process through and application of Writ of Habeas Corpus.
15. KJG I understand each of the above listed rights and I agree to waive them. I do freely and voluntarily state that I am the identical person against whom the criminal proceedings are pending in the State of Idaho. Further, I, hereby freely, voluntarily and without requisition papers, warrant of rendition, or any other forms of processes, having for their purpose my return to the State of Idaho.
16. KJG This agreement and waiver is made by me without any references to my guilt or innocence and shall not be considered in any matter as prejudicing my case, and is not, an admission of guilt.

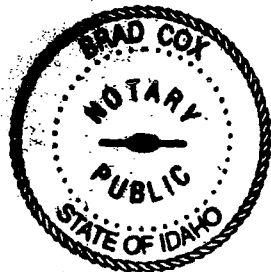
17. VC I further wholly exonerate and hold blameless in this matter, the Sheriff of Kootenai county, State of Idaho, and all persons acting under him, and agree to accompany to the State of Idaho, any peace officer or authorized agent who may be sent to take me the State of Idaho.
18. VC I have signed this document freely and voluntarily, and without promise of reward, leniency, or immunity.
19. VC No one has threatened me or any member of my family in order to get me to sign this document.
20. VC I have read the entire waiver form, and I understand every portion of it. I have freely and voluntarily sign this form.
21. VC I understand I have the right to appear before a judge in any state to be advised of my signed rights regarding the Waiver of Extradition, and that I freely and voluntarily waive such procedural rights.
22. VC I swear upon oath and subject to perjury, that the statements acknowledged by me in this Waiver of Extradition are true and correct.

This statement and waiver done at Kootenai County, Idaho this 4th day of February 2004.

Kirk Gosch

State of Idaho)
County of Kootenai) ss

On this 4th day of February, in the year, 2004, before me, Brad Cox
A Notary Public, in and for the State of Idaho, personally
appeared Kirk Gosch, known or identified to me to be the person whose
name is subscribed the within instrument and acknowledged to me that he/she executed the
same. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notorial seal the
day and year first above written.



Brad Cox
Notary Public

Residing at: KCSD
My commission expires: 3-12-10

CASE NO F05-403

CHARGE(S) 37-2132BAx2

STATE OF IDAHO } SS
COUNTY OF KOOTENAI }
FILED: 9

NOTICE TO DEFENDANTS

Regarding your release from custody

TO: Gosch, Kirk J, Defendant. FPC # 2866014384 2005 FEB -7 AM 9:06
CLERK DISTRICT COURT

- [] You were released on your own recognizance by Judge _____ on the _____ day of _____, 20____ at _____
[] telephone / fax [] Bailiff slip [] personal contact
- [X] You have posted bail / cash in the amount of \$10,000.00 to secure your release.
- [] Misdemeanor(s) (446-1170) : The court has required you to appear _____, 20____ at 8:30 A.M. at the Kootenai County Justice Building in Courtroom #11.
- [] Child Support/Juveniles (446-1160): You must contact the Clerk of District Court at the Kootenai County Justice Building, 324 W. Garden Avenue, Coeur d'Alene, Idaho, **within 7 working days.**
- [] Felony (446-1170): The court has instructed you to appear _____, 20____, at _____ M. at the Kootenai County Justice Building (check with the clerk at the front counter for the proper courtroom)
- [X] You or your attorney will be notified by the Court when to appear.

Two of the conditions of your release on bail/your own recognizance are:

1. YOU ARE REQUIRED TO NOTIFY THE COURT AND YOUR ATTORNEY, if you have one, OF ANY CHANGE OF ADDRESS OR PHONE NUMBER THAT YOU HAVE WHILE YOUR CASE IS PENDING BEFORE THE COURT
2. NOTIFY YOUR ATTORNEY OF THE COURT DATE ABOVE.

[] IF BONDING ON Domestic Assault or Battery - I.C.18-918, Violation of Domestic Violence Protection Order - I.C.39-6312 or Stalking - I.C.18-7905, **YOU SHALL HAVE NO CONTACT WITH THE PERSON ALLEGED TO HAVE BEEN ASSAULTED OR BATTERED PURSUANT TO THE SEPARATE NO CONTACT ORDER DELIVERED TO YOU WITH THIS NOTICE.**

FAILURE TO APPEAR ON ANY APPEARANCE DATE OR FAILURE TO NOTIFY THE COURT REGARDING CHANGE OF ADDRESS OR PHONE NUMBER MAY CAUSE A WARRANT TO ISSUE FOR YOUR ARREST.

MY CURRENT MAILING ADDRESS: P.O. Box 655 Hayden Id, 83835

MY CURRENT PHYSICAL ADDRESS (if different from above): _____

MY CURRENT PHONE NUMBER IS: 208-704-2229 MESSAGE PHONE: 208-444-9332

I have read and understand the above instructions. My signature is not an admission of guilt to any charge(s), but acknowledgment of the instructions contained above.

2/4/05
DATE

Kirk J. Gosch
SIGNATURE OF DEFENDANT

WITNESS

Paul L. Lister
DEPUTY SHERIFF

***NOTE TO JAILER: Return this to the Court. If the Defendant refuses to sign this, witness the same and make a written indication that the defendant refused to do so.

WILLIAM J. DOUGLAS
Prosecuting Attorney
501 Government Way/Box 9000
Coeur d'Alene, ID 83816-1971
Telephone: (208) 446-1800

ASSIGNED ATTORNEY
ARTHUR VERHAREN ✓
Deputy Prosecuting Attorney

STATE OF IDAHO } SS
COUNTY OF KOOTENAI }
FILED:

2005 FEB -7 PM 3:54

CLERK DISTRICT COURT
Cindy Orkelly
DEPUTY *WR*

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,

Plaintiff,

vs.

KIRK JULLIARD GOSCH,

DOB: [REDACTED]
SSN: [REDACTED]

Defendant.

Case No. CR-F05-403

INFORMATION

WILLIAM J. DOUGLAS, Prosecuting Attorney in and for the County of Kootenai, State of Idaho, who prosecutes in its behalf, comes now into Court, and does accuse **KIRK JULLIARD GOSCH** of the crime(s) of **COUNT I, TRAFFICKING IN COCAINE**, Idaho Code §37-2732B(a)(2), **COUNT II, MANUFACTURING A CONTROLLED SUBSTANCE**, Idaho Code §37-2732(a), **COUNT III, POSSESSION OF A CONTROLLED SUBSTANCE WITH THE**

INFORMATION: Page 1

INTENT TO DELIVER, Idaho Code §37-2732(a), and **COUNT IV, POSSESSION OF MARIJUANA IN EXCESS OF THREE OUNCES**, Idaho Code §37-2732(e), committed as follows:

COUNT I

That the defendant, **KIRK JUILLARD GOSCH**, on or about the 6th day of January, 2005, in the County of Kootenai, State of Idaho, did knowingly possess twenty-eight (28) grams or more of cocaine, a Schedule II controlled substance, or of any mixture or substance containing a detectable amount of cocaine;

COUNT II

That the defendant, **KIRK JUILLARD GOSCH**, on or about the 6th day of January, 2005, in the County of Kootenai, State of Idaho, did unlawfully manufacture a controlled substance, to-wit: Marijuana, a Schedule I controlled substance, by compounding or converting or processing marijuana into honey oil;

COUNT III

That the defendant, **KIRK JUILLARD GOSCH**, on or about the 6th day of January, 2005, in the County of Kootenai, State of Idaho, did unlawfully possess a controlled substance, to-wit: Marijuana, a Schedule I controlled substance, with the intent to deliver the aforementioned controlled substance;

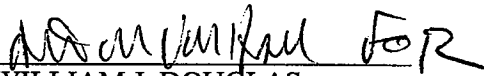
COUNT IV

That the defendant, **KIRK JUILLARD GOSCH**, on or about the 6th day of January, 2005, in the County of Kootenai, State of Idaho, did unlawfully possess a controlled substance, to-wit: Marijuana, a Schedule I controlled substance, in an amount in excess of three (3) ounces, all of

INFORMATION: Page 2

which is contrary to the form, force and effect of the statute in such case made and provided and against the peace and dignity of the People of the State of Idaho.

DATED this 3 day of February, 2005.


WILLIAM J. DOUGLAS
PROSECUTING ATTORNEY
FOR KOOTENAI COUNTY, IDAHO

CERTIFICATE OF MAILING

I hereby certify that on the 3 day of February, 2005, a true and correct copy of the foregoing and the Order Holding was caused to be mailed to:
PUBLIC DEFENDERS OFFICE, I.O.M.
KIRK GOSCH, KCPSB



INFORMATION: Page 3

ORIGIN. 1

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED:

Anne C. Taylor, Deputy Public Defender
Office of the Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83814
Phone: (208) 446-1700; Fax: (208) 446-1704
Bar Number: 5836

7005 FEB 15 AM 9:35

CLERK DISTRICT COURT

DEPUTY

STATE OF IDAHO)
County of Kootenai) ss
FILED _____

AT _____ O'Clock _____ M
CLERK OF THE COURT

Deputy

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,

Plaintiff,

v.

KIRK J. GOSCH,

Defendant.

**CASE NUMBER CR-05-0000403
Fel**

DEFENDANT'S WRITTEN PLEA

I, Kirk Gosch, having been advised of my rights do acknowledge the following:

1. I am represented by my lawyer, Anne C Taylor.

2. I am charged with having committed the following crime(s):

COUNT I - TRAFFICKING IN COCAINE, I.C. 37-2732B(a)(2), which is punishable by life in prison or a fine not to exceed \$100,000.(Note: Depending on the weight, there are mandatory minimum sentences that should be included.)

COUNT II - MANUFACTURING A CONTROLLED SUBSTANCE, I.C. 37-2732(a), which is punishable by life in prison, a fine not to exceed \$25,000, or both.

COUNT III - POSSESSION OF A CONTROLLED SUBSTANCE, I.C. 37-2732(a), which is punishable by not more than seven (7) years imprisonment, or fine not to exceed \$15,000.00, or both.

DEFENDANT'S WRITTEN PLEA -1-

COUNT IV - POSSESSION OF A CONTROLLED SUBSTANCE (MARIJUANA IN EXCESS OF 3 OZ.), I.C.

37-2732(e), which is punishable by not more than five (5) years imprisonment, or fine not to exceed \$10,000.00, or both.

3. I am 24 years of age. I have 13 1/2 years of education. I do not have any trouble in reading and understanding the English language.

4. I understand that I have the following rights, which I keep if I plead **not guilty**:

a. I have a right to a trial before a jury of 12 persons; that the state must convince each of those 12 persons of my guilt beyond a reasonable doubt; that in order to prove its case, the state must call witnesses to testify, under oath, before me, before the jury and before my lawyer. My lawyer would have the right to question those witnesses or cross examine them.

b. I would have the right to call witnesses of my choosing to testify concerning my guilt or innocence. If I do not have the money to bring those witnesses to court the state would pay the cost of bringing those witnesses to court.

c. I have the absolute right to remain silent throughout my entire trial. I cannot be compelled to testify.

5. I understand that if I plead "guilty," I will give up all of the rights recited in

Paragraph 4. That is:

a. There will be no trial. There will be no witnesses concerning my guilt or innocence. I will waive my right to remain silent. In fact, I can be required to take the oath and testify about the matters to which I have pled guilty.

b. If I pled guilty, I will give up any right to contest or object to anything that has happened in my case prior to the time I enter my guilty plea. For example, I will not be able to challenge the method or manner of my arrest, or of any searches of my person or property, or of any confession or statement I may have made.

c. If I pled guilty, I will be considered to have admitted each of the facts alleged in the charge to which I pled guilty.

6. At the time I sign this plea, I am not under the influence of any drugs or alcohol that in any way interferes with my ability to understand what I am doing. I am not suffering any mental illness or disability that interferes with my ability to understand what I am doing.

7. o I am in custody. My bail is set at \$_____.

DEFENDANT'S WRITTEN PLEA -2-

☒ I am not in custody. _____

☐ My residence is at _____

☒ My mailing address is PO Box 655 Hayden ID
83835

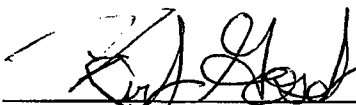
8. I have discussed the charges against me and all the matters set forth in this form with my lawyer.

☒ 9. I plead **NOT GUILTY** to all charges.

☐ 10. There is a plea bargain. If there is, a written copy is attached to this plea. I understand and agree that the judge is not bound by any such plea bargain.

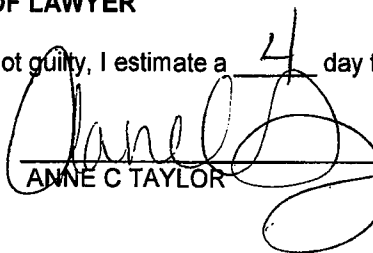
☐ 11. I plead **GUILTY** to the charges in Count(s) _____ of the information. I have not been promised anything in order to get me to plead guilty. No one has threatened me to get me to plead guilty. I enter this plea freely, voluntarily and knowing that the judge could sentence me to the maximum punishment for the crime(s) I have pled guilty. I did the things and acts alleged in the charge(s) to which I pled guilty.

Dated this 14 day of February, 2005.


KIRK GOSCH Defendant

CERTIFICATE OF LAWYER

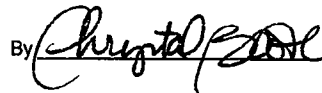
I concur with the foregoing plea. If the plea is not guilty, I estimate a 4 day trial.


ANNE C TAYLOR Lawyer

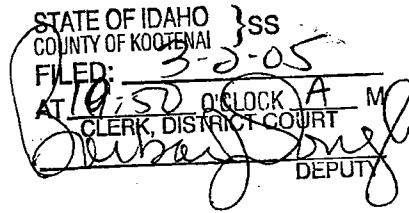
CERTIFICATE OF MAILING

I hereby certify that on the 14th day of February, 2005, a true and correct copy of the foregoing was mailed, postage prepaid, or sent by facsimile or interoffice mail to:

Kootenai County Prosecuting Attorney (fax)
Hon. C. Hosack Chambers (fax)

By 

DEFENDANT'S WRITTEN PLEA -3-



IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)	Case No. CRF-05-403
)	
Plaintiff,)	
	)	NOTICE OF TRIAL SETTING
vs.	)	AND PRETRIAL ORDER
)	
KIRK GOSCH,)	
)	
Defendant.)	

Defendant has entered a written plea of not guilty and requested a jury trial. Good cause appearing,

IT IS ORDERED that the above matter is set for trial before a jury for four (4) days commencing on May 9, 2005, at 9:00 a.m. at the Kootenai County Courthouse.

IT IS FURTHER ORDERED that the parties and their lawyers shall appear for a pretrial conference at the Kootenai County Courthouse on May 5, 2005, at 3:00 p.m.

IT IS FURTHER ORDERED that all Rule 12(b), I.C.R., pretrial motions shall be filed within sixty (60) days from the date of filing of the Information or Indictment and be brought on for hearing within thirty (30) days after filing or seven (7) days before trial, whichever first occurs.

IT IS FURTHER ORDERED that all parties shall comply with *I.R.C.P. 5(d)(3)*.

In order to assist with the trial of this matter **IT IS HEREBY ORDERED** that:

1. **Pretrial Motions.** Pretrial motions, including Motions to Suppress and Dismiss, must be filed within sixty (60) days from the date of filing of the Information, and shall be accompanied by an appropriate brief and a notice of hearing with an estimate of the time necessary for the hearing. Copies of all such papers shall be filed with my resident chambers in Coeur d'Alene. Attached to the chambers copies shall be copies of all authorities relied which are not contained in either the *Idaho Code* or the *Idaho Reports*.

2. **Exhibit Lists.** Each party shall prepare a list of exhibits which it expects to offer. **Two copies** of the exhibit list are to be provided to the Court and a copy to opposing counsel. Exhibits should be listed in the order that the party anticipates they will be offered.

3. **Exhibits.** Exhibit labels can be obtained from the court clerk. Each party shall affix labels to their exhibits before trial. State's exhibits should be marked with the yellow labels, in numerical sequence. Defendant's exhibits should be marked with blue labels, in alphabetical sequence. If there are more than twenty-six exhibits for the Defendant, mark them "AA", "BB", etc., keeping in mind exhibits that may be grouped together for easy reference. The criminal action number of the case should also be placed on each of the exhibit labels. Exhibits should be lodged and served as required by this order.

4. **Copies of Exhibits.** You are to provide ***a copy of each documentary exhibit*** to opposing counsel and to the Court. It is expected that you will have a copy of each of your exhibits. Copies should be made ***after*** the labels are marked and attached to

the original exhibit. To expedite trial, each exhibit to be offered should be viewed by opposing counsel prior to trial and a determination made as to whether an objection will be lodged against the exhibit. Only where counsel has not had a reasonable opportunity to see an exhibit in advance will the trial be interrupted for such a review.

5. **Witnesses.** Counsel shall provide each other with a list of their witnesses and shall provide the Court with **two copies** of each list of witnesses. One copy will be provided to the Court Reporter which will avoid the need for asking the spelling of the witnesses' names. Witnesses should be listed in the order that counsel anticipate calling them.

6. **Instructions.** The Court has prepared stock instructions, copies of which may be obtained upon your request. All proposed instructions shall be prepared in accordance with ***I.R.C.P. 51(a)*** and served upon opposing counsel and filed with the court not later than seven (7) days before trial.

7. **Exchange of Exhibits & Lists.** Exhibits, exhibit lists and witness lists shall be prepared and exchanged between counsel and filed with the Court at least seven (7) days before trial.

8. **Briefs.** Pretrial briefs shall be prepared and exchanged between counsel and filed with the Court at least seven (7) days before the scheduled trial date. Copies of all such papers shall be filed with my resident chambers in Coeur d'Alene. Attached to the chambers copies shall be copies of all authorities relied which are not contained in either the ***Idaho Code*** or the ***Idaho Reports***.

IT IS FURTHER ORDERED that this order may be modified only by leave of the Court.

NOTICE IS HEREBY GIVEN, pursuant to Rule 25(6), Idaho Criminal Rules, that alternate judges are hereby assigned to preside in this case. The following is a list of alternate judges:

Hon. John T. Mitchell
Hon. John P. Luster
Hon. Fred M. Gibler
Hon. Steven Verby
Hon. James R. Michaud
Hon. George R. Reinhardt, III

Dated this 1 day of ^{March}~~February~~, 2005.



CHARLES W. HOSACK
DISTRICT JUDGE

CERTIFICATE OF MAILING

I hereby certify that on the 2 day of ^{March}~~February~~, 2005, a true and correct copy of the foregoing was mailed, postage prepaid, or sent by facsimile or interoffice mail to:

ID
ID
X
Kootenai County Prosecutor
Kootenai County Public Defender
Kirk Gosch, 11974 N. Rimrock Road, Hayden, ID 83835

DANIEL ENGLISH
CLERK OF THE DISTRICT COURT

By 
Deputy Clerk

ORIGINAL

Anne C. Taylor, Deputy Public Defender
Office of the Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83814
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 5836

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED:

2005 MAR -3 PM 3: 09

CLERK DISTRICT COURT

DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,

Plaintiff,

V.

KIRK J. GOSCH,

Defendant.

CASE NUMBER CR-05-0000403

Fel

MOTION TO SUPPRESS

COMES NOW, the above named defendant by and through his attorney, Anne C Taylor, Deputy Public Defender, and hereby moves the Court for an Order suppressing any and all evidence gathered against the above named defendant including all statements made by the defendant. The evidence must be suppressed because the warrant was insufficient and/or the search was warrantless and/or the arrest by the officers was unlawful and without legal justification, therefore in violation of the Constitution and laws of the United States and the State of Idaho.

Counsel requests that this motion be set for hearing in order to present oral argument, evidence and/or testimony in support thereof. Requested time is 30 minutes.

MOTION TO SUPPRESS

Page 1

DATED this 3 day of March, 2005.

OFFICE OF THE KOOTENAI
COUNTY PUBLIC DEFENDER

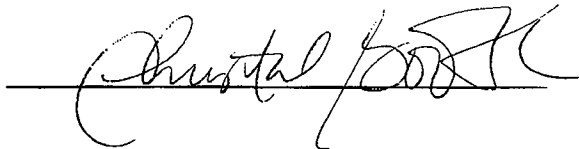
BY:


ANNE C TAYLOR
DEPUTY PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same in the interoffice mailbox on the 3rd day of March, 2005, addressed to:

Kootenai County Prosecutor



ORIGINAL

STATE OF IDAHO } ss
COUNTY OF KOOTENAI
FILED: 5-5-05
AT 3:15 O'CLOCK P M
CLERK, DISTRICT COURT
DEPUTY

OFFICE OF THE KOOTENAI COUNTY PUBLIC DEFENDER
400 NORTHWEST BOULEVARD
COEUR D'ALENE, IDAHO 83814
Telephone: (208) 446-1700
Fax: (208) 446-1701

Assigned Attorney: Lynn Nelson
ISB #: 3152

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)	
)	
Plaintiff,	)	CASE NUMBER CR-F-2005- 403
)	
V.)	
)	
KIRK J. GOSCH,	)	WAIVER OF RIGHT TO
	)	SPEEDY TRIAL
Defendant.)	
_____)	

COMES NOW the above named defendant, by and through his attorney Lynn Nelson, Chief Deputy Public Defender, and waives all constitutional and statutory rights to a speedy trial in the above entitled matter. The defendant has been informed by his attorney that he has the right to have the matter tried within 6 months of filing of an Information against him, and that by signing this waiver he is giving up the right to have the trial within that 6 month period.

WAIVER OF RIGHT TO SPEEDY TRIAL - 1

DATED this 5th day of May, 2005.

OFFICE OF THE KOOTENAI
COUNTY PUBLIC DEFENDER

Kirk J. Gosch
Kirk J. Gosch
DEFENDANT

BY: Lynn Nelson
Lynn Nelson
CHIEF DEPUTY PUBLIC DEFENDER

CERTIFICATE OF MAILING

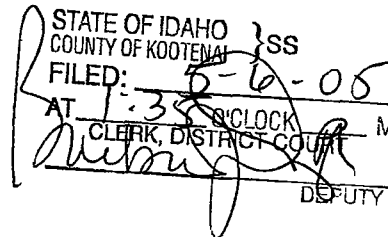
I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same in the inter office mailbox on the _____ day of _____ addressed to:

Kootenai County Prosecutor _____

WAIVER OF RIGHT TO SPEEDY TRIAL - 2

ORIGINAL

OFFICE OF THE KOOTENAI COUNTY PUBLIC DEFENDER
400 NORTHWEST BOULEVARD
COEUR D'ALENE, IDAHO 83814
Telephone: (208) 446-1700
Fax: (208) 446-1701



Assigned Attorney: Lynn Nelson
ISB # 3152

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI


STATE OF IDAHO,)	
)	
Plaintiff,	)	CASE NUMBER CR-F-2005- 403
)	
V.	)	ORDER CONTINUING PRETRIAL
	)	CONFERENCE AND JURY TRIAL AND
KIRK J. GOSCH,	)	RESETTING DATES OF HEARINGS
)	
Defendant.)	

BASED on the defendant's Motion to Continue the Pretrial Conference and Jury Trial, the State having no objection, and good cause appearing;

IT IS HEREBY ORDERED that the Pretrial Conference scheduled for May 5, 2005, and the jury trial scheduled for May 9, 2005, are hereby continued.

IT IS FURTHER ORDERED that this matter be re-set for a Pretrial Conference on August 4, 2005 at 3:00 p.m. and Jury Trial for August 8, 2005, at 9:00 A. M.

DATED this 5 day of May, 2005.


Charles W. Hosack
DISTRICT JUDGE

**ORDER CONTINUING PRETRIAL CONFERENCE AND JURY TRIAL
AND RESETTING DATES OF HEARINGS**

-1-

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same in the inter office mailbox on the 6 day of ~~June~~, 2005 addressed to: may

Kootenai County Prosecuting Attorney JD

Kootenai County Public Defender JD

Barbara Jough

**ORDER CONTINUING PRETRIAL CONFERENCE AND JURY TRIAL
AND RESETTING DATES OF HEARINGS**

-2-

Session: Hosack080405P
Session Date: 2005/08/04
Judge: Hosack, Charles
Reporter: Schaller, Joann

Division: DIST
Session Time: 09:20

Courtroom: Courtroom9

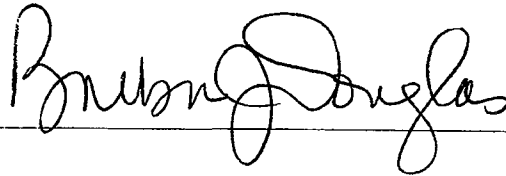
Clerk(s):
Douglas, Barbara

State Attorney(s):

Public Defender(s):

Prob. Officer(s):

Court interpreter(s):



Case ID: 0006

Case number: CR2005-~~4~~403
Plaintiff:
Plaintiff Attorney:
Defendant: Gosch, Kirk J
Co-Defendant(s):
Pers. Attorney:
State Attorney:
Public Defender:

2005/08/04

16:13:29 - Operator
Recording:

16:13:29 - New case
Gosch, Kirk J

16:14:17 - Judge: Hosack, Charles
Donna Gardner; Lynn Nelson and Def is present.

16:14:28 - Add Ins: Nelson, Lynn
We filed written waiver of speedy. Want to set out 60 days -
negotiating

16:14:40 - Add Ins: Nelson, Lynn
settlement

16:14:56 - Add Ins: Gardner, Donna
agree

16:14:58 - Judge: Hosack, Charles

This was cont'd once before - you did file written wiver of speedy. We
will

Pretrial Conf

16:15:14 - Judge: Hosack, Charles
reset trial in October -

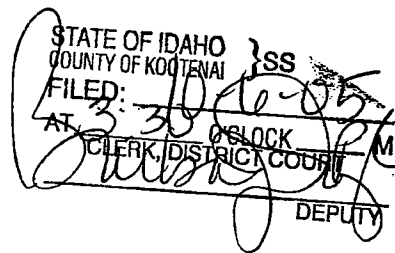
16:15:28 - Defendant: Gosch, Kirk J
understands

16:15:32 - Judge: Hosack, Charles
STIP. TO CONTINUE TRIAL DATE GRANTED. RESET PRETRIAL OCTOBER 6 AT 3PM;
RESET

16:15:59 - Judge: Hosack, Charles
4 DAY JURY TRIAL ON OCTOBER 11, 2005.

16:16:46 - Operator
Stop recording:

Anne C. Taylor, Deputy Public Defender
Office of the Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83814
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 5836



**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,

Plaintiff,

V.

KIRK J. GOSCH,

Defendant.

**CASE NUMBER CR-05-0000403
Fel**

**MOTION TO CONTINUE PRE-TRIAL
CONFERENCE AND JURY TRIAL**

COMES NOW, the above named defendant, by and through his attorney, Anne C Taylor,
Deputy Public Defender and hereby moves the Court for an Order continuing the hearing now
set for October 6, 2005 Pre-Trial Conference and October 11, 2005 Jury Trial.

This motion is made on the grounds that both the State and the Defendant, through his
attorney, Anne C. Taylor have Stipulated to a continuance.

DATED this 6th day of October, 2005.

"NO OBJECTION"

PER STIPULATION

~~DONNA GARDNER~~ MARTY RAMP
DEPUTY PROSECUTOR

OFFICE OF THE KOOTENAI
COUNTY PUBLIC DEFENDER

BY:

ANNE C TAYLOR
DEPUTY PUBLIC DEFENDER

MOTION TO CONTINUE PRE-TRIAL CONFERENCE AND JURY TRIAL

Page 1

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same in the interoffice mailbox on the _____ day of October, 2005, addressed to:

Kootenai County Prosecutor

MOTION TO CONTINUE PRE-TRIAL CONFERENCE AND JURY TRIAL
Page 2

Session: Hosack100605P
Session Date: 2005/10/06
Judge: Hosack, Charles
Reporter: Schaller, Joann

Division: DIST
Session Time: 07:42

Courtroom: Courtroom9

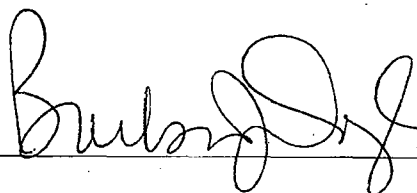
Clerk(s):
Douglas, Barbara

State Attorney(s):

Public Defender(s):

Prob. Officer(s):

Court interpreter(s):



Case ID: 0003

Case number: CR2005-403
Plaintiff:
Plaintiff Attorney:
Defendant: Gosch, Kirk J
Co-Defendant(s):
Pers. Attorney:
State Attorney:
Public Defender:

2005/10/06

15:52:11 - Operator
Recording:

15:52:11 - New case
Gosch, Kirk J

15:52:46 - Judge: Hosack, Charles

Counsel present; def present; HERE ON PRETRIAL CONFERENCE. Parties
agreed to

15:53:17 - Judge: Hosack, Charles

a continuance - roll this to December time frame. RESET JURY TRIAL FOR
DEC

15:53:32 - Judge: Hosack, Charles

12 AT 9AM; PRETRIAL CONFERENCE SET DEC 8, 2005 AT 3PM.

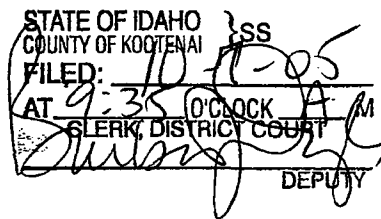
15:54:29 - Judge: Hosack, Charles

You waived right to speedy/confirm that waiver

15:54:43 - Defendant: Gosch, Kirk J

yes
15:55:16 - Operator
Stop recording:

Anne C. Taylor, Deputy Public Defender
Office of the Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83814
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 5836



**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,

Plaintiff,

V.

KIRK J. GOSCH,

Defendant.

**CASE NUMBER CR-05-0000403
Fel**

**ORDER TO CONTINUE PRE-TRIAL
CONFERENCE AND JURY TRIAL**

The Court having before it the Motion to Continue Hearing and both the State and the Defendant, through this attorney, Anne C. Taylor having Stipulated, and good cause appearing, now, therefore

IT IS HEREBY ORDERED that the hearing scheduled for October 6, 2005 Pre-Trial and October 11, 2005 Jury Trial is to be continued and regularly reset.

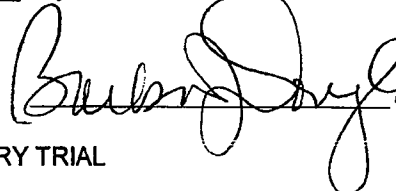
DATED this 12 day of October, 2005.


CHARLES W. HOSACK
DISTRICT JUDGE

CLERK'S CERTIFICATE

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same in the interoffice mailbox on the 7 day of October, 2005, addressed to:

Kootenai County Public Defender
Kootenai County Prosecutor



ORDER TO CONTINUE PRE-TRIAL CONFERENCE AND JURY TRIAL
Page 1

Case # CR 05-403
Charge(s) _____
Date 2-1-05 Time 2:30 Courtroom # 8
Tape # 40867 Judge Mitchell
Court Reporter Julie Toland
Type of Proceeding PTC # 188

Counsel	Party	Plaintiff	Defendant
Art Noren	For	<input checked="" type="checkbox"/>	
	For		
Anne Taylor	For		<input checked="" type="checkbox"/>
	For		

Identifier	Phase of Case
194	12-12-05 pending

Mike Troene

Session: Hosack120805P
Session Date: 2005/12/08
Judge: Hosack, Charles
Reporter: Schaller, Joann

Division: DIST
Session Time: 09:21

Courtroom: Courtroom9

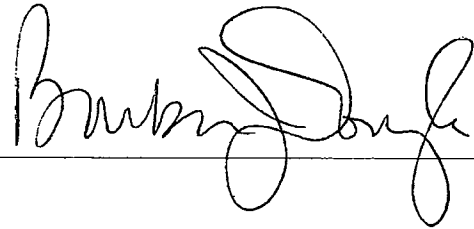
Clerk(s):
Douglas, Barbara

State Attorney(s):

Public Defender(s):

Prob. Officer(s):

Court interpreter(s):



Case ID: 0001

Case number: CR2005-403
Plaintiff:
Plaintiff Attorney:
Defendant: Gosch, Kirk
Co-Defendant(s):
Pers. Attorney:
State Attorney:
Public Defender:

2005/12/08

15:25:54 - Operator
Recording:
15:25:54 - New case
Gosch, Kirk
15:26:51 - Judge: Hosack, Charles
Anne Taylor and Art Verharen present. PRETRIAL CONFERENCE. Def requests
15:27:03 - Judge: Hosack, Charles
continuance
15:27:05 - Judge: Hosack, Charles
Matter is set for hrg on Mot/Suppress and Pretrial - no time to hear
15:27:16 - Judge: Hosack, Charles
Mot/Suppress at this time and date.
15:27:24 - Other: Taylor, Anne
move to continue
15:27:32 - Other: Verharen, Art
no objection
15:27:38 - Judge: Hosack, Charles
February time would work better for both sides - addresses def re waiver of

15:28:00 - Judge: Hosack, Charles
speedy trial.

15:28:04 - Defendant: Gosch, Kirk
understands.

15:28:08 - Judge: Hosack, Charles
continue trial to February 13, 2006 at 9am; Pretrial February 9 AT 3 PM.

15:28:57 - Other: Verharen, Art
3-4 days

15:29:02 - Other: Taylor, Anne
at least 4 days

15:29:07 - Judge: Hosack, Charles
4 day jury trial in February 13 at 9am; pretrial at 3pm on Feb 9, 2006.

15:29:39 - Operator
Stop recording:

ORIGINAL

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED:

WILLIAM J. DOUGLAS
Prosecuting Attorney
501 Government Way/Box 9000
Coeur d'Alene, ID 83814
Telephone: (208) 446-1800
ASSIGNED ATTORNEY:
ARTHUR VERHAREN

2005 JAN 11 PM 2:45

CLERK DISTRICT COURT

Mr. Melzer
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)	Case No. F05-403
)	
Plaintiff,)	
vs.	)	BRIEF IN OPPOSITION
	)	TO DEFENDANT'S
KIRK J. GOSCH,	)	MOTION TO SUPPRESS
)	
Defendant.)	

COMES NOW, Arthur Verharen, Deputy Prosecuting Attorney for Kootenai
County, and hereby submits the state's Brief in Opposition to Defendant's Motion to
Suppress.

ISSUE and FACTS

Pursuant to conversations with the defendant's attorney, the apparent issue is a
search of the defendant's white Suzuki car that took place on January 6, 2005. The state
expects the evidence to show that police executed a search warrant on the above date at
the defendant's residence located in Kootenai County. Detective Terry Morgan obtained
the warrant which authorized a search of the defendant's residence and his black Jeep, a
vehicle parked at the residence. The search warrant did not authorize a search of the
white Suzuki car which was also parked at the residence.

Two hours prior to execution of the search warrant, Detective Carlock conducted surveillance of the residence. She watched several individuals moving numerous household items from the residence into several different vehicles located in the driveway of the residence, including the defendant's white Suzuki car and his black Jeep. Those items were bedding, bags containing unknown objects, clothing, speakers and furniture. It appeared to her that the individuals were moving from the residence and loading their belongings into vehicles. She saw the defendant carry what appeared to be clothing and bedding from the house and load it into the white Suzuki car. Probable cause for the search warrant was found at approximately 12:55 p.m. The warrant was served at approximately 1:30 p.m.

At the time the warrant was executed, Deputy Shaw, with the Kootenai County Sheriff's Department, was summoned to the residence along with his Idaho state certified narcotic detection dog. Deputy Shaw ran the dog around the white Suzuki car and the dog exhibited a change of behavior while sniffing the car. Deputy Shaw opened the vehicle for the dog which, while inside the vehicle, alerted. Deputy Shaw then entered the vehicle and found illegal drugs.

APPLICABLE LAW and ARGUMENT

1. Vehicle Exception Search

The use of a police canine on the outside of a vehicle is not considered a search. *State v. Parkinson*, 135 Idaho 357, 363 (Ct. App. 2000). An alert by a police canine on a vehicle provides probable cause for a search of the vehicle and obviates the need for a search warrant. *Id.* See also *State v. Braendle*, 134 Idaho 173 (Ct. App. 2000). Such a

search falls under the vehicle exception to the Fourth Amendment. *State v. Tucker*, 132 Idaho 841 (1999).

Under the vehicle exception to the Fourth Amendment, a police officer may search a vehicle when he has probable cause to believe that the vehicle contains contraband. *State v. Ramirez*, 121 Idaho 319, 323 (Ct. App. 1991). In addition to contraband, this exception also applies to a vehicle that officers have probable cause to believe contains "evidence of a crime." *State v. Albaugh*, 133 Idaho 587, 591 (Ct.App. 1999).

The vehicle exception requires "the ready mobility of the vehicle, and on the presence of the vehicle in a setting that objectively indicates that the vehicle is being used for transportation." *California v. Carney*, 471 U.S. 386, 394 (1985). The specific issue of a vehicle exception search in the driveway of a residence has apparently not been addressed by Idaho courts. However, there is federal case law that does focus on this issue in light of *California v. Carney*. For instance, the Ninth Circuit applied the legal reasoning utilized in *Carney* and determined that the vehicle exception search was applicable to a search of a motor home that was parked in a residential driveway. *U.S. v. Hamilton*, 792 F.2d 837 (9th Cir. 1986).

Approximately ten years later the Ninth Circuit again took up this issue in the context of a vehicle exception search where the vehicle was located in the owner's driveway. *U.S. v. Hatley*, 15 F.3d 856 (9th Cir. 1994). The Ninth Circuit extended the holding in *Hamilton* to find that a vehicle exception search was permissible when the vehicle, located in the vehicle owner's driveway, "was not *actually* mobile, it was *apparently* mobile." *Id* at 859 (emphasis added by court).

Similar results have been found by other federal courts. In *U.S. v. Ludwig*, the defendant argued that *Carney* was not determinative in a vehicle exception search of car parked in a motel parking lot. *U.S. v. Ludwig*, 10 F.3d 1523 (10th Cir. 1994). Specifically, he argued that the exception did not apply "because his car was neither on the highway nor was it 'readily capable of such use and . . . found stationary in a place not regularly used for residential purposes-temporary or otherwise.'" *Id* at 1529. The argument was rejected by the 10th Circuit, which interpreted *Carney* to mean that the issue was simply to determine whether the vehicle in question was a residence or a means of transportation. *Id*.

The 6th Circuit has interpreted *Carney* to find that a valid vehicle exception search may take place in terms of a vehicle that is located in a private driveway. *U.S. v. Markham*, 844 F.2d 366 (6th Cir. 1988). Indeed, the 6th Circuit's take on *Carney* is quite broad: "In fact, as discussed above, the *Carney* majority held that whenever a vehicle is readily capable of use on public roads, the automobile exception is applicable." *Id* at 369.

Finally, if there exists probable cause to search a vehicle then "it justifies the search of every part of the vehicle and its contents that may conceal the object of the search." *United States v. Ross*, 456 U.S. 798, 799 (1982).

In the case at bar, the state asserts that the search of the defendant's white car was lawful as a vehicle exception search. First of all, the police were lawfully at the residence pursuant to the execution of a search warrant. That warrant authorized the police to search the residence and a Jeep for illegal drugs. However, during the two hours preceding execution of the warrant, items from the home were removed. In addition, in

the thirty-five minutes following issuance of the warrant and its execution, items from the home were removed and placed into vehicles. Thus, following issuance of the search warrant but prior to its execution, items from the house were removed and placed in the vehicles, including the white car. A magistrate had found probable cause to believe that the residence contained illegal drugs. It then logically follows that the police, based on the surveillance of the residence, had probable cause to believe the white car contained illegal drugs or evidence pertaining to illegal drugs because items from the residence were loaded into the vehicle.

Another method of viewing this incident as a vehicle exception search is by slightly changing the facts. What if Detective Carlock believed, based on information at hand and her surveillance of the residence that the individuals at the residence were in the midst of a burglary or theft of the residence. In other words, she had probable cause to believe that sort of crime was taking place. Would not the vehicle exception search apply to the white car in that situation, when she had watched items from the residence being placed into it? Could not the police search the white car for evidence of the crime of theft or burglary as a vehicle exception search when an officer saw items from the residence being loaded into the white car?

In *State v. Bottelson*, 102 Idaho 90 (1981), police came upon a residence with a vehicle parked by the residence. Based on the circumstances of the situation, police believed that a burglary of the residence was in progress. A search of the trunk of the vehicle was found to be lawful as a vehicle exception search. *Id* at 94. What is the difference then, in this case, when probable cause has been found that there are illegal drugs or evidence connected to drugs in the residence and items from that residence are

placed in the white car? In looking at the issue in that manner it appears that there is no real difference. The vehicle search exception would be applicable in the burglary or theft situation and it should also be applicable in this situation.

Finally, although the white car was in the driveway of the defendant's residence, Ninth Circuit case law supports the conclusion that the vehicle exception search should be controlling in the factual scenario before this Court. Thus, the search was lawful based on the police observations coupled with the finding of probable cause for the search warrant.

In addition, the search was also lawful as a vehicle exception search due to the change of behavior in Deputy Shaw's dog. The dog is a properly trained, experienced and reliable drug detection animal. It exhibited a change of behavior while outside the vehicle. That change of behavior supplied Deputy Shaw with probable cause to believe the white car contained illegal drugs. As such, the search was lawful on those grounds as a vehicle exception search.

2. Inevitable Discovery

In the event the Court rules that the vehicle exception search is not applicable to this situation then the state would urge the Court to consider inevitable discovery. The concept of inevitable discovery has a solid basis in Idaho law and is recognized as "an exception to the federal and state warrant requirements." *State v. Cook*, 106 Idaho 209, 216 (Ct. App. 1984). The reasoning for the exception is founded upon the notion that "excluding evidence that would inevitably been discovered would not further the purpose behind the exclusionary rule – to deter police misconduct." *Stuart v. State*, 136 Idaho 490, 497 (2001).

There need not be a separate police investigation to demonstrate inevitability, the focus of the analysis "should concentrate upon the inevitability of the discovery rather than the independence of the investigation. *State v. Buterbaugh*, 138 Idaho 96, 102 (Ct.App. 2002). In order to demonstrate inevitable discovery, the record before the court must reflect "predictable police procedures" and that those "procedures would have resulted in the discovery of the" evidence. *Cook*, 106 Idaho at 217.


As discussed, the magistrate found probable cause that the defendant's residence and Jeep contained illegal drugs or evidence pertaining to illegal drugs. The Jeep was found in the same driveway as the defendant's white car. Police saw items removed from the house and placed into the white car. Had police simply added the defendant's white car to the search warrant one can assume with substantial certainty that the magistrate would have found probable cause for it as well.

It is the state's belief that this is the exact type of scenario in which the doctrine of inevitable discovery should apply. The alleged unlawful search of the defendant's vehicle was a simple mistake on the part of the police. The magistrate *would* have found probable cause for the search of the vehicle because he found probable cause for a search of the residence and the Jeep and because items from the house were placed into the white car. Therefore, if it is determined that the vehicle exception search does not apply, then the Court should find inevitable discovery is applicable in this situation and not suppress those items found in the defendant's white car.

CONCLUSION


Based upon the above reasons, the state respectfully requests defendant's Motion to Suppress be denied.

DATED this 11 day of JANUARY, 2005.


ARTHUR VERHAREN
Deputy Prosecuting Attorney

CERTIFICATE OF MAILING

I hereby certify that on the 11 day of JANUARY, 2005, a true and correct copy of the foregoing was caused to be sent to the PUBLIC DEFENDERS OFFICE



Westlaw.

105 S.Ct. 2066

Page 1

471 U.S. 386, 105 S.Ct. 2066, 53 USLW 4521, 85 L.Ed.2d 406
(Cite as: 471 U.S. 386, 105 S.Ct. 2066)

P

Briefs and Other Related Documents

Supreme Court of the United States
CALIFORNIA, Petitioner
v.
Charles R. CARNEY.
No. 83-859.

Argued Oct. 30, 1984.
Decided May 13, 1985.

After unsuccessful motions to suppress evidence and to dismiss, defendant pleaded in the Superior Court, San Diego County, William T. Low, J., nolo contendere to charge of possession of marijuana for sale, and he appealed. The California Supreme Court, Mosk, J., 34 Cal.3d 597, 194 Cal.Rptr. 500, 668 P.2d 807, reversed and remanded, and certiorari was granted. The Supreme Court, Chief Justice Burger, held that: (1) warrantless search of mobile motor home did not violate Fourth Amendment, and (2) search was not unreasonable.

Reversed and remanded.

Justice Stevens filed a dissenting opinion in which Justices Brennan and Marshall joined.

West Headnotes

[1] Searches and Seizures 349 ¶60.1

349 Searches and Seizures
349I In General
349k60 Motor Vehicles
349k60.1 k. In General. Most Cited Cases
(Formerly 349k60, 349k3.3(6))

When vehicle is being used on highways or is capable of that use and found stationary in place not regularly used for residential purposes, justifications for vehicle exception to warrant requirement that vehicle is readily mobile and there is reduced expectation of privacy stemming from

pervasive regulation of vehicles capable of traveling on highways comes into play, and warrantless search is justified. U.S.C.A. Const.Amend. 4.

[2] Searches and Seizures 349 ¶59

349 Searches and Seizures
349I In General
349k59 k. Vehicles, Vessels, and Aircraft in General. Most Cited Cases
(Formerly 349k7(10))
Although defendant's mobile motor home possessed some attributes of a home, it was readily mobile, and there was a reduced expectation of privacy stemming from pervasive regulation of vehicles capable of traveling on highways; thus, warrantless search of mobile motor home did not violate Fourth Amendment. U.S.C.A. Const.Amend. 4.

[3] Searches and Seizures 349 ¶60.1

349 Searches and Seizures
349I In General
349k60 Motor Vehicles
349k60.1 k. In General. Most Cited Cases
(Formerly 349k60, 349k3.3(6))
Under vehicle exception to warrant requirement, only prior approval of magistrate is waived; search otherwise must be such as magistrate could authorize. U.S.C.A. Const.Amend. 4.

[4] Searches and Seizures 349 ¶59

349 Searches and Seizures
349I In General
349k59 k. Vehicles, Vessels, and Aircraft in General. Most Cited Cases
(Formerly 349k7(20))
Drug Enforcement Agency agents, based on uncontradicted evidence that defendant was distributing a controlled substance from mobile motor home, had abundant probable cause to enter and search home; thus, warrantless search of mobile motor home was not unreasonable.

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(Cite as: 471 U.S. 386, 105 S.Ct. 2066)

U.S.C.A. Const.Amend. 4.

****2066 *386 Syllabus** FN*

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

A Drug Enforcement Administration (DEA) agent, who had information that respondent's mobile motor home was being used to exchange marihuana for sex, watched respondent approach a youth who accompanied respondent to the motor home, which was parked in a lot in downtown San Diego. The agent and other agents then kept the vehicle under surveillance, and stopped the youth after he left the vehicle. He told them that he had received marihuana in return for allowing respondent sexual contacts. At the agents' request, the youth returned to the motor home and knocked on the door; respondent stepped out. Without a warrant or consent, one agent then entered the motor home and observed marijuana. A subsequent search of the motor home at the police station revealed additional marihuana, and respondent was charged with possession of marihuana for sale. After his motion to suppress the evidence discovered in the motor home was denied, respondent was convicted in California Superior Court on a plea of *nolo contendere*. The California**2067 Court of Appeal affirmed. The California Supreme Court reversed, holding that the search of the motor home was unreasonable and that the motor vehicle exception to the warrant requirement of the Fourth Amendment did not apply, because expectations of privacy in a motor home are more like those in a dwelling than in an automobile.

Held: The warrantless search of respondent's motor home did not violate the Fourth Amendment. Pp. 2068-2071.

(a) When a vehicle is being used on the highways or is capable of such use and is found stationary in a place not regularly used for residential purposes, the two justifications for the vehicle exception come into play. First, the vehicle is readily mobile, and, second, there is a reduced expectation of privacy stemming from the pervasive regulation of vehicles

capable of traveling on highways. Here, while respondent's vehicle possessed some attributes of a home, it clearly falls within the vehicle exception. To distinguish between respondent's motor home and an ordinary sedan for purposes of the vehicle exception would require that the exception be applied depending on the size of the vehicle and the quality of its appointments. Moreover, to fail to apply the exception to vehicles such as a motor home would ignore the fact that a motor home lends itself easily to use as an instrument of illicit drug traffic or other illegal activity. Pp. 2068-2071.

***387** (b) The search in question was not unreasonable. It was one that a magistrate could have authorized if presented with the facts. The DEA agents, based on uncontradicted evidence that respondent was distributing a controlled substance from the vehicle, had abundant probable cause to enter and search the vehicle. P. 2071.

34 Cal.3d 597, 194 Cal.Rptr. 500, 668 P.2d 807 (1983), reversed and remanded.

Louis R. Hanoian, Deputy Attorney General of California, argued the cause for petitioner. With him on the briefs were *John K. Van de Kamp*, Attorney General, *Steve White*, Chief Assistant Attorney General, and *Michael D. Wellington* and *John W. Carney*, Deputy Attorneys General.

Thomas F. Homann argued the cause for respondent. With him on the brief was *A. Dale Manicom*.*

* Briefs of *amici curiae* urging reversal were filed for the United States by *Solicitor General Lee*, *Assistant Attorney General Trott*, *Deputy Solicitor General Frey*, *Alan I. Horowitz*, and *Kathleen A. Felton*; and for the State of Minnesota et al. by *Hubert H. Humphrey III*, Attorney General of Minnesota, and *Thomas F. Catania, Jr.*, and *Paul R. Kempainen*, Special Assistant Attorneys General, *Jim Smith*, Attorney General of Florida, *Tany S. Hong*, Attorney General of Hawaii, and *Michael A. Lilly*, First Deputy Attorney General.

Frank O. Bell, Jr., and *George L. Schraer* filed a brief for the California State Public Defender as *amicus curiae* urging affirmance.

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471 U.S. 386, 105 S.Ct. 2066, 53 USLW 4521, 85 L.Ed.2d 406
(Cite as: 471 U.S. 386, 105 S.Ct. 2066)

Chief Justice BURGER delivered the opinion of the Court.

We granted certiorari to decide whether law enforcement agents violated the Fourth Amendment when they conducted a warrantless search, based on probable cause, of a fully mobile "motor home" located in a public place.

I

On May 31, 1979, Drug Enforcement Agency Agent Robert Williams watched respondent, Charles Carney, approach*388 a youth in downtown San Diego. The youth accompanied Carney to a Dodge Mini Motor Home parked in a nearby lot. Carney and the youth closed the window shades in the motor home, including one across the front window. Agent Williams had previously received uncorroborated information that the same motor home was used by another person who was exchanging marihuana for sex. Williams, with assistance from other agents, kept the motor home under surveillance for the entire one and one-quarter hours that Carney and the youth remained inside. When the youth left the motor home, the agents followed and stopped him. The youth told the agents that he had received marijuana in return for allowing Carney sexual contacts.

At the agents' request, the youth returned to the motor home and knocked on its door; Carney stepped out. The agents identified themselves as law enforcement officers. Without a warrant or consent, one agent entered the motor home and observed marihuana, plastic bags, and a scale of the kind used in weighing drugs on a table. Agent Williams took Carney into custody and took possession of the motor home. A subsequent search of the motor home at the police station revealed additional marihuana in the cupboards and refrigerator.

Respondent was charged with possession of marihuana for sale. At a preliminary hearing, he moved to suppress the evidence **2068 discovered in the motor home. The Magistrate denied the motion, upholding the initial search as a justifiable search for other persons, and the subsequent search

as a routine inventory search.

Respondent renewed his suppression motion in the Superior Court. The Superior Court also rejected the claim, holding that there was probable cause to arrest respondent, that the search of the motor home was authorized under the automobile exception to the Fourth Amendment's warrant requirement, and that the motor home itself could be seized without a warrant as an instrumentality of the crime. Respondent*389 then pleaded *nolo contendere* to the charges against him, and was placed on probation for three years.

Respondent appealed from the order placing him on probation. The California Court of Appeal affirmed, reasoning that the vehicle exception applied to respondent's motor home. 117 Cal.App.3d 36, 172 Cal.Rptr. 430 (1981).

The California Supreme Court reversed the conviction. 34 Cal.3d 597, 194 Cal.Rptr. 500, 668 P.2d 807 (1983). The Supreme Court did not disagree with the conclusion of the trial court that the agents had probable cause to arrest respondent and to believe that the vehicle contained evidence of a crime; however, the court held that the search was unreasonable because no warrant was obtained, rejecting the State's argument that the vehicle exception to the warrant requirement should apply. FN1 That court reached its decision by concluding that the mobility of a vehicle "is no longer the prime justification for the automobile exception; rather, 'the answer lies in the diminished expectation of privacy which surrounds the automobile.' " *Id.*, at 605, 194 Cal.Rptr., at 504, 668 P.2d, at 811. The California Supreme Court held that the expectations of privacy in a motor home are more like those in a dwelling than in an automobile because the primary function of motor homes is not to provide transportation but to "provide the occupant with living quarters." *Id.*, at 606, 194 Cal.Rptr., at 505, 668 P.2d, at 812.

FN1. Respondent contends that the state-court decision rests on an adequate and independent state ground, because the opinion refers to the State as well as the

105 S.Ct. 2066

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(Cite as: 471 U.S. 386, 105 S.Ct. 2066)

Federal Constitutions. Respondent's argument is clearly foreclosed by our opinion in *Michigan v. Long*, 463 U.S. 1032, 1040-1041, 103 S.Ct. 3469, 3476-3477, 77 L.Ed.2d 1201 (1983), in which we held, "when ... a state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion, we will accept as the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so." We read the opinion as resting on federal law.

We granted certiorari, 465 U.S. 1098, 104 S.Ct. 1589, 80 L.Ed.2d 122 (1984). We reverse.

390II

The Fourth Amendment protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." This fundamental right is preserved by a requirement that searches be conducted pursuant to a warrant issued by an independent judicial officer. There are, of course, exceptions to the general rule that a warrant must be secured before a search is undertaken; one is the so-called "automobile exception" at issue in this case. This exception to the warrant requirement was first set forth by the Court 60 years ago in *Carroll v. United States*, 267 U.S. 132, 45 S.Ct. 280, 69 L.Ed. 543 (1925). There, the Court recognized that the privacy interests in an automobile are constitutionally protected; however, it held that the ready mobility of the automobile justifies a lesser degree of protection of those interests. The Court rested this exception on a long-recognized distinction between stationary structures and vehicles: "[T]he guaranty of freedom from unreasonable searches and seizures by the Fourth Amendment has been construed, practically since the beginning of Government, as recognizing a necessary **2069 difference between a search of a store, dwelling

house or other structure in respect of which a proper official warrant readily may be obtained, and a search of a ship, motor boat, wagon or automobile, for contraband goods, where it is not practicable to secure a warrant because the vehicle can be *quickly moved* out of the locality or jurisdiction in which the warrant must be sought." *Id.*, at 153, 45 S.Ct., at 285 (emphasis added).

The capacity to be "quickly moved" was clearly the basis of the holding in *Carroll*, and our cases have consistently recognized ready mobility as one of the principal bases of the automobile exception. See, e.g., *Cooper v. California*, 386 U.S. 58, 59, 87 S.Ct. 788, 789, 17 L.Ed.2d 730 (1967); *Chambers v. Maroney*, 399 U.S. 42, 52, 90 S.Ct. 1975, 1981, 26 L.Ed.2d 419 (1970); *Cady v. Dombrowski*, 413 U.S. 433, 442, 93 S.Ct. 2523, 2528, 37 L.Ed.2d 706 (1973); *391 *Cardwell v. Lewis*, 417 U.S. 583, 588, 94 S.Ct. 2464, 2468, 41 L.Ed.2d 325 (1974); *South Dakota v. Opperman*, 428 U.S. 364, 367, 96 S.Ct. 3092, 3096, 49 L.Ed.2d 1000 (1976). In *Chambers*, for example, commenting on the rationale for the vehicle exception, we noted that "the opportunity to search is fleeting since a car is readily movable." 399 U.S., at 51, 90 S.Ct., at 1981. More recently, in *United States v. Ross*, 456 U.S. 798, 806, 102 S.Ct. 2157, 2163, 72 L.Ed.2d 572 (1982), we once again emphasized that "an immediate intrusion is necessary" because of "the nature of an automobile in transit...." The mobility of automobiles, we have observed, "creates circumstances of such exigency that, as a practical necessity, rigorous enforcement of the warrant requirement is impossible." *South Dakota v. Opperman*, *supra*, 428 U.S., at 367, 96 S.Ct., at 3096.

However, although ready mobility alone was perhaps the original justification for the vehicle exception, our later cases have made clear that ready mobility is not the only basis for the exception. The reasons for the vehicle exception, we have said, are twofold. 428 U.S., at 367, 96 S.Ct., at 3096. "Besides the element of mobility, less rigorous warrant requirements govern because the expectation of privacy with respect to one's automobile is significantly less than that relating to

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one's home or office." *Ibid.*

Even in cases where an automobile was not immediately mobile, the lesser expectation of privacy resulting from its use as a readily mobile vehicle justified application of the vehicular exception. See, e.g., *Cady v. Dombrowski*, *supra*. In some cases, the configuration of the vehicle contributed to the lower expectations of privacy; for example, we held in *Cardwell v. Lewis*, *supra*, 417 U.S., at 590, 94 S.Ct., at 2469, that, because the passenger compartment of a standard automobile is relatively open to plain view, there are lesser expectations of privacy. But even when enclosed "repository" areas have been involved, we have concluded that the lesser expectations of privacy warrant application of the exception. We have applied the exception in the context of a locked car trunk, *Cady v. Dombrowski*, *supra*, a sealed package in a car trunk, *Ross*, *supra*, a closed compartment under the dashboard, *Chambers**392 v. *Maroney*, *supra*, the interior of a vehicle's upholstery, *Carroll*, *supra*, or sealed packages inside a covered pickup truck, *United States v. Johns*, 469 U.S. 478, 105 S.Ct. 881, 83 L.Ed.2d 890 (1985).

These reduced expectations of privacy derive not from the fact that the area to be searched is in plain view, but from the pervasive regulation of vehicles capable of traveling on the public highways. *Cady v. Dombrowski*, *supra*, 413 U.S., at 440-441, 93 S.Ct., at 2527-2528. As we explained in *South Dakota v. Opperman*, an inventory search case: "Automobiles, unlike homes, are subjected to pervasive and continuing governmental regulation and controls, including periodic inspection and licensing requirements. As an everyday occurrence, police stop and examine vehicles when license plates or inspection stickers have expired, or if other violations, such as exhaust fumes or excessive noise, are **2070 noted, or if headlights or other safety equipment are not in proper working order." 428 U.S., at 368, 96 S.Ct., at 3096.

The public is fully aware that it is accorded less privacy in its automobiles because of this compelling governmental need for regulation.

Historically, "individuals always [have] been on notice that movable vessels may be stopped and searched on facts giving rise to probable cause that the vehicle contains contraband, without the protection afforded by a magistrate's prior evaluation of those facts." *Ross*, *supra*, 456 U.S., at 806, n. 8, 102 S.Ct., at 2163, n. 8. In short, the pervasive schemes of regulation, which necessarily lead to reduced expectations of privacy, and the exigencies attendant to ready mobility justify searches without prior recourse to the authority of a magistrate so long as the overriding standard of probable cause is met.

[1] When a vehicle is being used on the highways, or if it is readily capable of such use and is found stationary in a place not regularly used for residential purposes-temporary or otherwise-the two justifications for the vehicle exception *393 come into play. ^{FN2} First, the vehicle is obviously readily mobile by the turn of an ignition key, if not actually moving. Second, there is a reduced expectation of privacy stemming from its use as a licensed motor vehicle subject to a range of police regulation inapplicable to a fixed dwelling. At least in these circumstances, the overriding societal interests in effective law enforcement justify an immediate search before the vehicle and its occupants become unavailable.

FN2. With few exceptions, the courts have not hesitated to apply the vehicle exception to vehicles other than automobiles. See, e.g., *United States v. Rollins*, 699 F.2d 530 (CA11) (airplane), cert. denied, 464 U.S. 933, 104 S.Ct. 335, 78 L.Ed.2d 305 (1983).

[2] While it is true that respondent's vehicle possessed some, if not many of the attributes of a home, it is equally clear that the vehicle falls clearly within the scope of the exception laid down in *Carroll* and applied in succeeding cases. Like the automobile in *Carroll*, respondent's motor home was readily mobile. Absent the prompt search and seizure, it could readily have been moved beyond the reach of the police. Furthermore, the vehicle was licensed to "operate on public streets; [was] serviced in public places; ... and [was] subject to

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extensive regulation and inspection.” *Rakas v. Illinois*, 439 U.S. 128, 154, n. 2, 99 S.Ct. 421, 436, n. 2, 58 L.Ed.2d 387 (1978) (POWELL, J., concurring). And the vehicle was so situated that an objective observer would conclude that it was being used not as a residence, but as a vehicle.

Respondent urges us to distinguish his vehicle from other vehicles within the exception because it was *capable of functioning as a home*. In our increasingly mobile society, many vehicles used for transportation can be and are being used not only for transportation but for shelter, *i.e.*, as a “home” or “residence.” To distinguish between respondent’s motor home and an ordinary sedan for purposes of the vehicle exception would require that we apply the exception depending upon the size of the vehicle and the quality of its appointments. Moreover, to fail to apply the exception to vehicles *394 such as a motor home ignores the fact that a motor home lends itself easily to use as an instrument of illicit drug traffic and other illegal activity. In *United States v. Ross*, 456 U.S., at 822, 102 S.Ct., at 2171, we declined to distinguish between “worthy” and “unworthy” containers, noting that “the central purpose of the Fourth Amendment forecloses such a distinction.” We decline today to distinguish between “worthy” and “unworthy” vehicles which are either on the public roads and highways, or situated such that it is reasonable to conclude that the vehicle is not being used as a residence.

Our application of the vehicle exception has never turned on the other uses to which a vehicle might be put. The exception has historically turned on the ready mobility of the vehicle, and on the presence of the vehicle in a setting that objectively indicates that the vehicle is being used for **2071 transportation. FN3 These two requirements for application of the exception ensure that law enforcement officials are not unnecessarily hamstrung in their efforts to detect and prosecute criminal activity, and that the legitimate privacy interests of the public are protected. Applying the vehicle exception in these circumstances allows the essential purposes served by the exception to be fulfilled, while assuring that the exception will acknowledge legitimate privacy interests.

FN3. We need not pass on the application of the vehicle exception to a motor home that is situated in a way or place that objectively indicates that it is being used as a residence. Among the factors that might be relevant in determining whether a warrant would be required in such a circumstance is its location, whether the vehicle is readily mobile or instead, for instance, elevated on blocks, whether the vehicle is licensed, whether it is connected to utilities, and whether it has convenient access to a public road.

III

[3] The question remains whether, apart from the lack of a warrant, this search was unreasonable. Under the vehicle exception to the warrant requirement, “[o]nly the prior approval of the magistrate is waived; the search otherwise [must be such] as the magistrate could authorize.” *Ross*, *supra*, at 823, 102 S.Ct., at 2172.

*395 [4] This search was not unreasonable; it was plainly one that the magistrate could authorize if presented with these facts. The DEA agents had fresh, direct, uncontradicted evidence that the respondent was distributing a controlled substance from the vehicle, apart from evidence of other possible offenses. The agents thus had abundant probable cause to enter and search the vehicle for evidence of a crime notwithstanding its possible use as a dwelling place.

The judgment of the California Supreme Court is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Justice STEVENS, with whom Justice BRENNAN and Justice MARSHALL join, dissenting.

The character of “the place to be searched” FN1 plays an important role in Fourth Amendment analysis. In this case, police officers searched a Dodge/Midas Mini Motor Home. The California Supreme Court correctly characterized this vehicle

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as a "hybrid" which combines "the mobility attribute of an automobile ... with most of the privacy characteristics of a house." FN2

FN1. The Fourth Amendment provides:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

FN2. 34 Cal.3d 597, 606, 194 Cal.Rptr. 500, 505, 668 P.2d 807, 812 (1983).

The hybrid character of the motor home places it at the crossroads between the privacy interests that generally forbid warrantless invasions of the home, *Payton v. New York*, 445 U.S. 573, 585-590, 100 S.Ct. 1371, 1379-1382, 63 L.Ed.2d 639 (1980), and the law enforcement interests that support the exception for warrantless searches of automobiles based on probable cause, *United States v. Ross*, 456 U.S. 798, 806, 820, 102 S.Ct. 2157, 2163, 2170, 72 L.Ed.2d 572 (1982). By choosing to follow the latter route, the Court errs in three respects: it has entered new *396 territory prematurely, it has accorded priority to an exception rather than to the general rule, and it has abandoned the limits on the exception imposed by prior cases.

I

In recent Terms, the Court has displayed little confidence in state and lower federal court decisions that purport to enforce the Fourth Amendment. Unless an order suppressing evidence is clearly correct, a petition for certiorari is likely to garner the four votes required for a grant of plenary review-as the one in this case did. Much **2072 of the Court's "burdensome" workload is a product of its own aggressiveness in this area. By promoting the Supreme Court of the United States as the High Magistrate for every warrantless search and seizure,

this practice has burdened the argument docket with cases presenting fact-bound errors of minimal significance. FN3 It has also encouraged state legal officers to file petitions for certiorari in even the most frivolous search and seizure cases. FN4

FN3. *E.g., United States v. Johns*, 469 U.S. 478, 105 S.Ct. 881, 83 L.Ed.2d 890 (1985); *United States v. Sharpe*, 471 U.S. 675, 105 S.Ct. 1568, 84 L.Ed.2d 605 (1985); *Oklahoma v. Castleberry*, 471 U.S. 146, 105 S.Ct. 1859, 85 L.Ed.2d 112 (1985). Cf. *Florida v. Rodriguez*, 469 U.S. 1, 12-13, 105 S.Ct. 308, 83 L.Ed.2d 165 (1984) (STEVENS, J., dissenting, joined by BRENNAN, J.).

FN4. See, *e.g., State v. Caponi*, 12 Ohio St.3d 302, 466 N.E.2d 551 (1984), cert. denied, 469 U.S. 1209, 105 S.Ct. 1174, 84 L.Ed.2d 324 (1985). The Court's inventiveness in the search and seizure area has also emboldened state legal officers to file petitions for certiorari from state court suppression orders that are explicitly based on independent state grounds. See, *e.g., Jamison v. State*, 455 So.2d 1112 (Fla.App.1984), cert. denied, 469 U.S. 1127, 105 S.Ct. 811, 83 L.Ed.2d 804 (1985); *Ex parte Gannaway*, 448 So.2d 413 (Ala.1984), cert. denied, 469 U.S. 1207, 105 S.Ct. 1168, 84 L.Ed.2d 320 (1985); *State v. Burkholder*, 12 Ohio St.3d 205, 466 N.E.2d 176, cert. denied, 469 U.S. 1062, 105 S.Ct. 545, 83 L.Ed.2d 432 (1984); *People v. Corr*, 682 P.2d 20 (Colo.), cert. denied, 469 U.S. 855, 105 S.Ct. 181, 83 L.Ed.2d 115 (1984); *State v. Von Bulow*, 475 A.2d 995 (R.I.), cert. denied, 469 U.S. 875, 105 S.Ct. 233, 83 L.Ed.2d 162 (1984).

The Court's lack of trust in lower judicial authority has resulted in another improvident exercise of discretionary *397 jurisdiction. FN5 In what is at most only a modest extension of our Fourth Amendment precedents, the California Supreme Court held that police officers may not conduct a

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nonexigent search of a motor home without a warrant supported by probable cause. The State of California filed a petition for certiorari contending that the decision below conflicted with the authority of other jurisdictions. ^{FN6} Even a cursory examination of the cases alleged to be in conflict revealed that they did not consider the question presented here. ^{FN7}

FN5. *Michigan v. Long*, 463 U.S. 1032, 1065, 103 S.Ct. 3469, 3489, 77 L.Ed.2d 1201 (1983) (STEVENS, J., dissenting); *California v. Ramos*, 463 U.S. 992, 1029, 103 S.Ct. 3446, 3468, 77 L.Ed.2d 1171 (1983) (STEVENS, J., dissenting); *Watt v. Western Nuclear, Inc.*, 462 U.S. 36, 72-73, 103 S.Ct. 2218, 2238-2239, 76 L.Ed.2d 400 (1983) (STEVENS, J., dissenting); *Watt v. Alaska*, 451 U.S. 259, 273, 101 S.Ct. 1673, 1681, 68 L.Ed.2d 80 (1981) (STEVENS, J., concurring). See also Stevens, *Some Thoughts on Judicial Restraint*, 66 *Judicature* 177, 182 (1982).

FN6. Pet. for Cert. 15-17, 21, 24-25. The petition acknowledged that the decision below was consistent with dictum in two recent Ninth Circuit decisions. See *United States v. Wiga*, 662 F.2d 1325, 1329 (1981), cert. denied, 456 U.S. 918, 102 S.Ct. 1775, 72 L.Ed.2d 178 (1982); *United States v. Williams*, 630 F.2d 1322, 1326, cert. denied, 449 U.S. 865, 101 S.Ct. 197, 66 L.Ed.2d 83 (1980).

FN7. Only one case contained any reference to heightened expectations of privacy in mobile living quarters. *United States v. Cadena*, 588 F.2d 100, 101-102 (CA5 1979) (*per curiam*). Analogizing to automobile cases, the court upheld the warrantless search of an oceangoing ship while in transit. The court observed that the mobility "exception" required probable cause and exigency, and that "the increased measure of privacy that may be expected by those aboard a vessel mandates careful scrutiny both of probable

cause for the search and the exigency of the circumstances excusing the failure to secure a warrant." *Id.*, at 102.

In all of the other cases, defendants challenged warrantless searches for vehicles claiming either no probable cause or the absence of exigency under *Coolidge v. New Hampshire*, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971). *United States v. Montgomery*, 620 F.2d 753, 760 (CA10) ("camper"), cert. denied, 449 U.S. 882, 101 S.Ct. 232, 66 L.Ed.2d 106 (1980); *United States v. Clark*, 559 F.2d 420, 423-425 (CA5) ("camper pick-up truck"), cert. denied, 434 U.S. 969, 98 S.Ct. 516, 54 L.Ed.2d 457 (1977); *United States v. Lovenguth*, 514 F.2d 96, 97 (CA9 1975) ("pick up with ... camper top"); *United States v. Cusanelli*, 472 F.2d 1204, 1206 (CA6) (*per curiam*) (two camper trucks), cert. denied, 412 U.S. 953, 93 S.Ct. 3003, 37 L.Ed.2d 1006 (1973); *United States v. Miller*, 460 F.2d 582, 585-586 (CA10 1972) ("motor home"); *United States v. Rodgers*, 442 F.2d 902, 904 (CA5 1971) ("camper truck"); *State v. Million*, 120 Ariz. 10, 15-16, 583 P.2d 897, 902-903 (1978) ("motor home"); *State v. Sardo*, 112 Ariz. 509, 513-514, 543 P.2d 1138, 1142 (1975) ("motor home"). Only *Sardo* involved a vehicle that was not in transit, but the motor home in that case was about to depart the premises.

Two State Supreme Courts have upheld the warrantless search of mobile homes in transit, notwithstanding a claim of heightened privacy interests. See *State v. Mower*, 407 A.2d 729, 732 (Me.1979); *State v. Lepley*, 343 N.W.2d 41, 42-43 (Minn.1984). Those cases—which were not cited in the petition for certiorari—are factually distinguishable from the search of the parked motor home here. In any case, some conflict among state courts on novel questions of the kind involved here is desirable as a means of exploring and refining alternative approaches to the problem.

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*398 **2073 This is not a case "in which an American citizen has been deprived of a right secured by the United States Constitution or a federal statute. Rather, ... a state court has upheld a citizen's assertion of a right, finding the citizen to be protected under both federal and state law." *Michigan v. Long*, 463 U.S. 1032, 1067-1068, 103 S.Ct. 3469, 3490, 77 L.Ed.2d 1201 (1983) (STEVENS, J., dissenting). As an unusually perceptive study of this Court's docket stated with reference to *California v. Ramos*, 463 U.S. 992, 103 S.Ct. 3446, 77 L.Ed.2d 1171 (1983), "this ... situation ... rarely presents a compelling reason for Court review in the absence of a fully percolated conflict." FN8 The Court's decision to forge ahead *399 has established a rule for searching motor homes that is to be followed by the entire Nation. If the Court had merely allowed the decision below to stand, it would have only governed searches of those vehicles in a single State. The breadth of this Court's mandate counsels greater patience before we offer our binding judgment on the meaning of the Constitution.

FN8. Estreicher & Sexton, New York University Supreme Court Project, A Managerial Theory of the Supreme Court's Responsibilities (1984) (to be published in 59 N.Y.U.L.Rev. 677, 761 (1984)). The study elaborated:

"[T]he Court should not hear cases in which a state court has invalidated state action on a federal ground should not be heard by the Court in the absence of a conflict or a decision to treat the case as a vehicle for a major pronouncement of federal law. Without further percolation, there is ordinarily little reason to believe that the issue is one of recurring national significance. In general, correction of error, even regarding a matter of constitutional law, is not a sufficient basis for Supreme Court intervention. This last category differs from a federal court's invalidation of state action in that a structural justification for intervention is generally missing, given the absence of vertical federalism difficulties and the

built-in assurance that state courts functioning under significant political constraints are not likely to invalidate state action lightly even on federal grounds.... [The Court] should not grant ... merely to correct perceived error." *Id.*, at 738-739 (footnote omitted).

Chief Justice Samuel Roberts, Retired, of the Pennsylvania Supreme Court has expressed similar concerns. Roberts, The Adequate and Independent State Ground: Some Practical Considerations, 17 IJA Rep., No. 2, pp. 1-2 (1985).

Premature resolution of the novel question presented has stunted the natural growth and refinement of alternative principles. Despite the age of the automobile exception and the countless cases in which it has been applied, we have no prior cases defining the contours of a reasonable search in the context of hybrids such as motor homes, house trailers, houseboats, or yachts. In this case, the Court can barely glimpse the diverse lifestyles associated with recreational vehicles and mobile living quarters. FN9 The line or lines separating mobile homes from permanent structures might have been drawn in various ways, with consideration given to whether the home is moving or at rest, whether it rests on land or water, the form of the vehicle's attachment to its location, its potential speed of departure, its size and capacity to serve as a domicile, and its method of locomotion. Rational decisionmaking strongly counsels against divining the uses and abuses of these vehicles in the vacuum of the first case raising the question before us.

FN9. See generally 45 Trailer Life, No. 1 (1985); *id.*, No. 2; 22 Motor Home, No. 1 (1985); *id.*, No. 2; 1 R V Lifestyle Magazine, No. 3 (1985).

Of course, we may not abdicate our responsibility to clarify the law in this field. Some caution, however, is justified when every decision requires us to resolve a vexing "conflict ... between the individual's constitutionally protected interest in privacy and the public interest in effective law

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****2074** enforcement.” *United States v. Ross*, 456 U.S., at 804, 102 S.Ct., at 2161. “The certainty that is supposed to come from speedy resolution ***400** may prove illusory if a premature decision raises more questions than it answers.” ^{FN10} The only true rules governing search and seizure have been formulated and refined in the painstaking scrutiny of case-by-case adjudication. Consideration of this matter by the lower courts in a series of litigated cases would surely have facilitated a reasoned accommodation of the conflicting interests. To identify rules that will endure, we must rely on the state and lower federal courts to debate and evaluate the different approaches to difficult and unresolved questions of constitutional law. ^{FN11} Deliberation on the question over time winnows out the unnecessary ***401** and discordant elements of doctrine and preserves “whatever is pure and sound and fine.” ^{FN12}

FN10. Hellman, *The Proposed Intercircuit Tribunal: Do We Need It? Will It Work?*, 11 *Hastings Const.L.Q.* 375, 405 (1984).

FN11. “Although one of the Court’s roles is to ensure the uniformity of federal law, we do not think that the Court must act to eradicate disuniformity as soon as it appears.... Disagreement in the lower courts facilitates percolation—the independent evaluation of a legal issue by different courts. The process of percolation allows a period of exploratory consideration and experimentation by lower courts before the Supreme Court ends the process with a nationally binding rule. The Supreme Court, when it decides a fully percolated issue, had the benefit of the experience of those lower courts. Irrespective of docket capacity, the Court should not be compelled to intervene to eradicate disuniformity when further percolation or experimentation is desirable.

measure to the principle of percolation. This is one justification for the absence of intercourt stare decisis. Similarly, state and federal courts daily engage in a process of ‘dialectical federalism’ wherein state courts are not bound by the holdings of lower federal courts in the same geographical area. But more than past practice and the structure of the judicial system supports a policy of awaiting percolation before Supreme Court intervention. A managerial conception of the Court’s role embraces lower court percolation as an affirmative value. The views of the lower courts on a particular legal issue provide the Supreme Court with a means of identifying significant rulings as well as an experimental base and a set of doctrinal materials with which to fashion sound binding law. The occurrence of a conflict acts as a signaling device to help the Court identify important issues. Moreover, the principle of percolation encourages the lower courts to act as responsible agents in the process of development of national law.” *Estreicher & Sexton, supra* n. 8, at 716, 719 (footnotes omitted).

FN12. B. Cardozo, *The Nature of the Judicial Process* 179 (1921).

II

The Fourth Amendment guarantees the “right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures.” We have interpreted this language to provide law enforcement officers with a bright-line standard: “searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well delineated exceptions.” *Katz v. United States*, 389 U.S. 347, 357, 88 S.Ct. 507, 514, 19 L.Ed.2d 576 (1967) (footnotes omitted); *Arkansas v. Sanders*, 442 U.S. 753, 758, 99 S.Ct. 2586, 2590, 61 L.Ed.2d 235 (1979).

In *United States v. Ross*, the Court reaffirmed the primary importance of the general rule condemning warrantless searches, and emphasized that the

“Our system is already committed in substantial

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exception permitting the search of automobiles without a warrant is a narrow one. 456 U.S., at 824-825, 102 S.Ct., at 2172-2173. We expressly endorsed "the general rule," stated in *Carroll v. United States*, 267 U.S. 132, 156, 45 S.Ct. 280, 286, 69 L.Ed. 543 (1925), that "[i]n cases where the securing of a warrant is reasonably practicable, it must be used." 456 U.S., at 807, 102 S.Ct., at 2163. Given this warning and the presumption of regularity that attaches to a warrant,^{FN13} it is hardly unrealistic to **2075 expect experienced law enforcement officers to obtain a search warrant when one can easily be secured.

FN13. *United States v. Leon*, 468 U.S. 897, 913-914, 104 S.Ct. 3405, 3415-3416, 82 L.Ed.2d 677 (1984); *Illinois v. Gates*, 462 U.S. 213, 236-237, 103 S.Ct. 2317, 2331, 76 L.Ed.2d 527 (1983).

The ascendancy of the warrant requirement in our system of justice must not be bullied aside by extravagant claims of necessity:

" 'The warrant requirement ... is not an inconvenience to be somehow "weighed" against the claims of police efficiency. It is, or should be, an important working part *402 of our machinery of government, operating as a matter of course to check the "well-intentioned but mistakenly overzealous executive officers" who are a part of any system of law enforcement.' [*Coolidge v. New Hampshire*, 403 U.S. 443, 481, 91 S.Ct. 2022, 2045, 29 L.Ed.2d 564 (1971).]

"... By requiring that conclusions concerning probable cause and the scope of a search 'be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime' *Johnson v. United States*, 333 U.S. 10, 14 [68 S.Ct. 367, 369, 92 L.Ed. 436] (1948), we minimize the risk of unreasonable assertions of executive authority." *Arkansas v. Sanders*, 442 U.S., at 758-759, 99 S.Ct., at 2590.

If the motor home were parked in the exact middle of the intersection between the general rule and the exception for automobiles, priority should be given to the rule rather than the exception.

III

The motor home, however, was not parked in the middle of that intersection. Our prior cases teach us that inherent mobility is not a sufficient justification for the fashioning of an exception to the warrant requirement, especially in the face of heightened expectations of privacy in the location searched. Motor homes, by their common use and construction, afford their owners a substantial and legitimate expectation of privacy when they dwell within. When a motor home is parked in a location that is removed from the public highway, I believe that society is prepared to recognize that the expectations of privacy within it are not unlike the expectations one has in a fixed dwelling. As a general rule, such places may only be searched with a warrant based upon probable cause. Warrantless searches of motor homes are only reasonable when the motor home is traveling on the public streets or highways, or when exigent circumstances otherwise require an immediate search without the expenditure of time necessary to obtain a warrant.

*403 As we explained in *Ross*, the automobile exception is the product of a long history:

"[S]ince its earliest days Congress had recognized the impracticability of securing a warrant in cases involving the transportation of contraband goods. It is this impracticability, viewed in historical perspective, that provided the basis for the *Carroll* decision. Given the nature of an automobile in transit, the Court recognized that an immediate intrusion is necessary if police officers are to secure the illicit substance. In this class of cases, the Court held that a warrantless search of an automobile is not unreasonable." 456 U.S., at 806-807, 102 S.Ct., at 2163 (footnotes omitted).^{FN14}

FN14. "As we have stated, the decision in *Carroll* was based on the Court's appraisal of practical considerations viewed in the perspective of history." 456 U.S., at 820, 102 S.Ct., at 2170.

The automobile exception has been developed to

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ameliorate the practical problems associated with the search of vehicles that have been stopped on the streets or public highways because there was probable cause to believe they were transporting contraband. Until today, however, the Court has never decided whether the practical justifications that apply to a vehicle that is stopped in transit on a public way apply with the same force to a vehicle parked in a lot near a court house where it could easily be detained while a warrant is **2076 issued.
FN15

FN15. In *Coolidge v. New Hampshire*, 403 U.S. 443, 91 S.Ct. 2045, 99 L.Ed.2d 564 (1971), a plurality refused to apply the automobile exception to an automobile that was seized while parked in the driveway of the suspect's house, towed to a secure police compound, and later searched:

"The word 'automobile' is not a talisman in whose presence the Fourth Amendment fades away and disappears. And surely there is nothing in this case to invoke the meaning and purpose of the rule of *Carroll v. United States* - no alerted criminal bent on flight, no fleeting opportunity on an open highway after a hazardous chase, no contraband or stolen goods or weapons, no confederates waiting to move the evidence, not even the inconvenience of a special police detail to guard the immobilized automobile. In short, by no possible stretch of the legal imagination can this be made into a case where 'it is not practicable to secure a warrant.' [267 U.S., at 153, 45 S.Ct., at 285,] and the 'automobile exception' despite its label, is simply irrelevant." *Id.*, at 461-462, 91 S.Ct., at 2036 (opinion of Stewart, J., joined by Douglas, BRENNAN, and MARSHALL, JJ.).

In *Cardwell v. Lewis*, 417 U.S. 583, 94 S.Ct. 2464, 41 L.Ed.2d 325 (1974), a different plurality approved the seizure of an automobile from a public parking lot, and a later examination of its exterior. *Id.*, at 592-594, 94 S.Ct., at 2470-2471 (opinion of BLACKMUN, J.). Here, of

course, we are concerned with the reasonableness of the search, not the seizure. Even if the diminished expectations of privacy associated with an automobile justify the warrantless search of a parked automobile notwithstanding the diminished exigency, the heightened expectations of privacy in the interior of a motor home require a different result.

*404 In this case, the motor home was parked in an off-the-street lot only a few blocks from the courthouse in downtown San Diego where dozens of magistrates were available to entertain a warrant application. FN16 The officers clearly had the element of surprise with them, and with curtains covering the windshield, the motor home offered no indication of any imminent departure. The officers plainly had probable cause to arrest the respondent and search the motor home, and on this record, it is inexplicable why they eschewed the safe harbor of a warrant. FN17

FN16. See Suppression Hearing Tr. 7; Tr. of Oral Arg. 27. In addition, a telephonic warrant was only 20 cents and the nearest phone booth away. See Cal.Penal Code Ann. §§ 1526(b), 1528(b) (West 1982); *People v. Morrongiello*, 145 Cal.App.3d 1, 9, 193 Cal.Rptr. 105, 109 (1983).

FN17. This willingness to search first and later seek justification has properly been characterized as "a decision roughly comparable in prudence to determining whether an electrical wire is charged by grasping it." *United States v. Mitchell*, 538 F.2d 1230, 1233 (CA5 1976) (en banc), cert. denied, 430 U.S. 945, 97 S.Ct. 1578, 51 L.Ed.2d 792 (1977).

In the absence of any evidence of exigency in the circumstances of this case, the Court relies on the inherent mobility of the motor home to create a conclusive presumption of exigency. This Court, however, has squarely held that mobility of the place to be searched is not a sufficient justification for abandoning the warrant requirement. In *United*

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States v. Chadwick, 433 U.S. 1, 97 S.Ct. 2476, 53 L.Ed.2d 538 (1977), the Court held that a warrantless search of a footlocker violated the Fourth Amendment even *405 though there was ample probable cause to believe it contained contraband. The Government had argued that the rationale of the automobile exception applied to movable containers in general, and that the warrant requirement should be limited to searches of homes and other "core" areas of privacy. See *id.*, at 7, 97 S.Ct., at 2481. We categorically rejected the Government's argument, observing that there are greater privacy interests associated with containers than with automobiles,^{FN18} and that there are less practical problems associated with the temporary detention of a container than with the detention of an automobile. See *id.*, at 13, and n. 7, 97 S.Ct., at 2484, and n. 7.

FN18. "The factors which diminish the privacy aspects of an automobile do not apply to respondent's footlocker. Luggage contents are not open to public view, except as a condition to a border entry or common carrier travel; nor is luggage subject to regular inspections and official scrutiny on a continuing basis. Unlike an automobile, whose primary function is transportation, luggage is intended as a repository of personal effects. In sum, a person's expectations of privacy in personal luggage are substantially greater than in an automobile." 433 U.S., at 13, 97 S.Ct., at 2484.

We again endorsed that analysis in *Ross*:

**2077 "The Court in *Chadwick* specifically rejected the argument that the warrantless search was 'reasonable' because a footlocker has some of the mobile characteristics that support warrantless searches of automobiles. The Court recognized that 'a person's expectations of privacy in personal luggage are substantially greater than in an automobile,' [433 U.S., at 13, 97 S.Ct., at 2484], and noted that the practical problems associated with the temporary detention of a piece of luggage during the period of time necessary to obtain a warrant are significantly less than those associated

with the detention of an automobile. *Id.*, at 13, n. 7 [97 S.Ct., at 2484, n. 7]." 456 U.S., at 811, 102 S.Ct., at 2165-2166.

It is perfectly obvious that the citizen has a much greater expectation of privacy concerning the interior of a mobile home than of a piece of luggage such as a footlocker. If "inherent mobility" does not justify warrantless searches *406 of containers, it cannot rationally provide a sufficient justification for the search of a person's dwelling place.

Unlike a brick bungalow or a frame Victorian, a motor home seldom serves as a permanent lifetime abode. The motor home in this case, however, was designed to accommodate a breadth of ordinary everyday living. Photographs in the record indicate that its height, length, and beam provided substantial living space inside: stuffed chairs surround a table; cupboards provide room for storage of personal effects; bunk beds provide sleeping space; and a refrigerator provides ample space for food and beverages.^{FN19} Moreover, curtains and large opaque walls inhibit viewing the activities inside from the exterior of the vehicle. The interior configuration of the motor home establishes that the vehicle's size, shape, and mode of construction should have indicated to the officers that it was a vehicle containing mobile living quarters.

FN19. Record, Ex. Nos. 102, 103.

The State contends that officers in the field will have an impossible task determining whether or not other vehicles contain mobile living quarters. It is not necessary for the Court to resolve every unanswered question in this area in a single case, but common English usage suggests that we already distinguish between a "motor home" which is "equipped as a self-contained traveling home," a "camper" which is only equipped for "casual travel and camping," and an automobile which is "designed for passenger transportation."^{FN20} Surely the exteriors of these vehicles contain clues about their different functions which could alert officers in the field to the necessity of a warrant.^{FN21}

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FN20. Webster's Ninth New Collegiate Dictionary 118, 199, 775 (1983).

FN24. §§ 23221, 23223, 23225, 23226, 23229 (West Supp.1985).

FN21. In refusing to extend the California Supreme Court's decision in *Carney* beyond its context, the California Court of Appeals have had no difficulty in distinguishing the motor home involved there from a Ford van, *People v. Chestnut*, 151 Cal.App.3d 721, 726-727, 198 Cal.Rptr. 8, 11 (1983), and a cab-high camper shell on the back of a pickup truck, *People v. Gordon*, 156 Cal.App.3d 74, 82, 202 Cal.Rptr. 566, 570 (1984). There is no reason to believe that trained officers could not make similar distinctions between different vehicles, especially when state vehicle laws already require them to do so.

*407 The California Vehicle Code also refutes the State's argument that the exclusion of "motor homes" from the automobile exception would be impossible to apply in practice. In its definitional section, the Code distinguishes campers and house cars from station wagons, and suggests that they are special categories of the more general terms-motor vehicles and passenger vehicles. FN22 A "house car" is "a motor vehicle originally designed, or permanently altered, and equipped for human habitation, or to which a camper has been permanently attached." FN23 Alcoholic beverages **2078 may not be opened or consumed in motor vehicles traveling on the highways, except in the "living quarters of a housecar or camper." FN24 The same definitions might not necessarily apply in the context of the Fourth Amendment, but they do indicate that descriptive distinctions are humanly possible. They also reflect the California Legislature's judgment that "house cars" entertain different kinds of activities than the ordinary passenger vehicle.

FN22. Cal.Veh. Code Ann. §§ 243, 362, 415, 465, 585 (West 1971 and Supp.1985).

FN23. § 362 (West 1971).

In my opinion, searches of places that regularly accommodate a wide range of private human activity are fundamentally different from searches of automobiles which primarily serve a public transportation function. FN25 Although it may not be a castle, a motor home is usually the functional equivalent of a hotel room, a vacation and retirement home, or a hunting and fishing cabin. These places may be as spartan*408 as a humble cottage when compared to the most majestic mansion, 456 U.S., at 822, 102 S.Ct., at 2171; *ante*, at 2070, but the highest and most legitimate expectations of privacy associated with these temporary abodes should command the respect of this Court. *Stoner v. California*, 376 U.S. 483, 490, 84 S.Ct. 889, 893, 11 L.Ed.2d 856 (1964); *Payton v. New York*, 445 U.S., at 585, 100 S.Ct., at 1379; *United States v. Karo*, 468 U.S. 705, 714-715, 104 S.Ct. 3296, 3302-3303, 82 L.Ed.2d 530 (1984). FN26 In my opinion, a warrantless search of living quarters in a motor home is "presumptively unreasonable absent exigent circumstances." *Ibid*.

FN25. Cf. *Cardwell v. Lewis*, 417 U.S., at 590, 94 S.Ct., at 2469 (opinion of BLACKMUN, J.):

"One has a lesser expectation of privacy in a motor vehicle because its function is transportation, and it seldom serves as one's residence or as the repository of personal effects. A car has little capacity for escaping public scrutiny. It travels public thoroughfares where both its occupants and its contents are in plain view."

FN26. "At the risk of belaboring the obvious, private residences are places in which the individual normally expects privacy free of governmental intrusion not authorized by a warrant, and that expectation is plainly one that society is prepared to recognize as justifiable. Our cases have not deviated from this basic

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Fourth Amendment principle. Searches and seizures inside a home without a warrant are presumptively unreasonable absent exigent circumstances." *United States v. Karo*, 468 U.S., at 714-715, 104 S.Ct., at 3303.

I respectfully dissent.

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Briefs and Other Related Documents (Back to top)

- 1984 WL 565989 (Appellate Brief) Reply Brief (Oct. 23, 1984)
- 1984 WL 565987 (Appellate Brief) Respondent's Brief on the Merits (Aug. 02, 1984)
- 1984 WL 565993 (Appellate Brief) Brief of the California State Public Defender as Amicus Curiae in Support of Respondent (Jul. 02, 1984)
- 1984 WL 565985 (Appellate Brief) Brief on the Merits (Jun. 04, 1984)
- 1984 WL 565995 (Appellate Brief) Brief of the State of Minnesota and the States of Florida and Hawaii as Amici Curiae in Support of Petitioner the People of the State of California (Jun. 02, 1984)
- 1984 WL 565991 (Appellate Brief) Brief for the United States as Amicus Curiae Supporting Petitioner (Jun. 1984)

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▷

United States Court of Appeals, Tenth Circuit.
UNITED STATES of America, Plaintiff-Appellant,
v.

Keith Rudolph LUDWIG, Defendant-Appellee.
National Association of Criminal Defense Lawyers,
Amicus Curiae.
No. 93-2084.

Dec. 1, 1993.

Rehearing Denied Feb. 2, 1994.

Defendant charged with drug offenses moved to suppress evidence on ground that warrantless search of his vehicle violated Fourth Amendment. The United States District Court for the District of New Mexico, Juan G. Burciaga, Chief Judge, granted motion. Government appealed. The Court of Appeals, Stephen H. Anderson, Circuit Judge, held that: (1) entry by police officers into motel parking lot for canine sniff was not "search" under Fourth Amendment; (2) random and suspicionless dog sniffs of vehicles in motel parking lot was not "search" subject to Fourth Amendment; (3) dog alert gave agents probable cause to search defendant's automobile trunk; and (4) warrantless search of defendant's car was not unreasonable even if there was little or no risk that defendant or confederate would have come out of motel and driven car away.

Reversed and remanded.

West Headnotes

[1] Searches and Seizures 349 ⇨22

349 Searches and Seizures

349I In General

349k13 What Constitutes Search or Seizure

349k22 k. Scent; Use of Dogs. Most

Cited Cases

Searches and Seizures 349 ⇨26

349 Searches and Seizures

349I In General

349k25 Persons, Places and Things Protected

349k26 k. Expectation of Privacy. Most

Cited Cases

Neither defendant, resident of motel, or even motel owner had legitimate expectation of privacy in motel's parking lot, and thus, police officer's entry of motel parking lot with dog for canine sniff of vehicles parked in lot was not "search" under Fourth Amendment, where parking lot was open and visible from public roads bordering it and was not fenced, no gate prevented unauthorized entry, and no signs restricted entry to parking lot. U.S.C.A. Const.Amend. 4.

[2] Searches and Seizures 349 ⇨22

349 Searches and Seizures

349I In General

349k13 What Constitutes Search or Seizure

349k22 k. Scent; Use of Dogs. Most

Cited Cases

Searches and Seizures 349 ⇨26

349 Searches and Seizures

349I In General

349k25 Persons, Places and Things Protected

349k26 k. Expectation of Privacy. Most

Cited Cases

Defendant had no more expectation of privacy in particular parking space in motel parking lot, even if defendant did rent parking space with his motel room, than he or motel owner had in lot generally and, thus, entry of police officer into motel parking lot with dog for canine sniff of vehicle was not "search" under Fourth Amendment, where parking space rented by defendant was open to street just as rest of lot was and was open and visible from rest of parking lot where agents entered lawfully with motel manager's consent. U.S.C.A. Const.Amend. 4.

[3] Searches and Seizures 349 ⇨22

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349 Searches and Seizures

349I In General

349k13 What Constitutes Search or Seizure

349k22 k. Scent; Use of Dogs. Most

Cited Cases

Random and suspicionless dog sniffs of vehicles in motel parking lot without prior lawful detention or reasonable suspicion was not "search" subject to Fourth Amendment. U.S.C.A. Const.Amend. 4.

[4] Searches and Seizures 349 ⇐53.1

349 Searches and Seizures

349I In General

349k53 Scope, Conduct, and Duration of Warrantless Search

349k53.1 k. In General. Most Cited Cases

Government agent may not unlawfully enter area in order to conduct random and suspicionless dog sniff. U.S.C.A. Const.Amend. 4.

[5] Searches and Seizures 349 ⇐26

349 Searches and Seizures

349I In General

349k25 Persons, Places and Things Protected

349k26 k. Expectation of Privacy. Most

Cited Cases

Fourth Amendment protects subjective expectation of privacy only if society recognizes that expectation is reasonable or justifiable. U.S.C.A. Const.Amend. 4.

[6] Controlled Substances 96H ⇐137

96H Controlled Substances

96HIV Searches and Seizures

96HIV(B) Search Without Warrant

96Hk137 k. Odor Detection; Use of

Dogs. Most Cited Cases

(Formerly 138k185.5 Drugs and Narcotics)

Defendant's subjective expectation that drugs in his trunk would not be smelled by dog pursuant to canine sniff was not recognized by society as legitimate expectation under Fourth Amendment. U.S.C.A. Const.Amend. 4.

[7] Controlled Substances 96H ⇐137

96H Controlled Substances

96HIV Searches and Seizures

96HIV(B) Search Without Warrant

96Hk137 k. Odor Detection; Use of

Dogs. Most Cited Cases

(Formerly 138k185.5 Drugs and Narcotics)

Dog alert gave drug agents probable cause to search trunk of defendant's car. U.S.C.A. Const.Amend. 4.

[8] Searches and Seizures 349 ⇐40.1

349 Searches and Seizures

349I In General

349k40 Probable Cause

349k40.1 k. In General. Most Cited Cases

Dog alert usually is at least as reliable as many other sources of probable cause and is certainly reliable enough to create fair probability that there is contraband justifying search under Fourth Amendment. U.S.C.A. Const.Amend. 4.

[9] Controlled Substances 96H ⇐137

96H Controlled Substances

96HIV Searches and Seizures

96HIV(B) Search Without Warrant

96Hk137 k. Odor Detection; Use of

Dogs. Most Cited Cases

(Formerly 138k185.5 Drugs and Narcotics)

That dog alerted on defendant's vehicle half an hour after beginning of surveillance of vehicle, alone, did not result in less than fair probability that there were drugs in vehicle as indicated by dog alert so as to preclude finding of probable cause to search vehicle since drugs would have remained in car unless someone removed them. U.S.C.A. Const.Amend. 4.

[10] Controlled Substances 96H ⇐137

96H Controlled Substances

96HIV Searches and Seizures

96HIV(B) Search Without Warrant

96Hk137 k. Odor Detection; Use of

Dogs. Most Cited Cases

(Formerly 138k185.5 Drugs and Narcotics)

Factual discrepancies between accounts given by drug agents handling dogs during canine sniff as to how dogs alerted did not support conclusion that alert never happened or was itself unreliable to

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support finding of probable cause for search of vehicle. U.S.C.A. Const.Amend. 4.

[11] Searches and Seizures 349 ⇐62

349 Searches and Seizures

349I In General

349k60 Motor Vehicles

349k62 k. Probable or Reasonable Cause.

Most Cited Cases

Warrantless search of defendant's car following dog alert was not unreasonable, even if there was little or no risk that defendant or confederate would come out of motel and drive car away, where police had probable cause to search car. U.S.C.A. Const.Amend. 4.

[12] Searches and Seizures 349 ⇐62

349 Searches and Seizures

349I In General

349k60 Motor Vehicles

349k62 k. Probable or Reasonable Cause.

Most Cited Cases

Warrantless search of automobile is reasonable if there is probable cause to believe it contains contraband. U.S.C.A. Const.Amend. 4.

[13] Searches and Seizures 349 ⇐60.1

349 Searches and Seizures

349I In General

349k60 Motor Vehicles

349k60.1 k. In General. Most Cited Cases

If police have probable cause to search car, they need not get search warrant first even if they have time and opportunity. U.S.C.A. Const.Amend. 4.

[14] Searches and Seizures 349 ⇐60.1

349 Searches and Seizures

349I In General

349k60 Motor Vehicles

349k60.1 k. In General. Most Cited Cases

Automobile exception to warrant requirement applied to search of defendant's vehicle parked in motel parking lot, despite defendant's claim that automobile was in place regularly used for temporary residential purposes, where car itself was

obviously not being used as residence and car was parked at motel suggesting that driver was residing in motel rather than car. U.S.C.A. Const.Amend. 4.

[15] Criminal Law 110 ⇐1192

110 Criminal Law

110XXIV Review

110XXIV(U) Determination and Disposition of Cause

110k1192 k. Mandate and Proceedings in Lower Court. Most Cited Cases

Defendant was entitled to opportunity to present his evidence on motion to suppress following Court of Appeals' reversal of district court's granting of suppression order, where district court granted order prior to hearing defendant's evidence. U.S.C.A. Const.Amend. 4.

*1525 David Williams, Asst. U.S. Atty. (Don J. Svet, U.S. Atty., and Stephen R. Kotz, Asst. U.S. Atty., on the brief), Albuquerque, NM, for plaintiff-appellant.

Charles A. Harwood (James B. Foy, on the brief), Foy, Foy & Castillo, P.C., Silver City, NM, for defendant-appellee.

Peter Schoenburg, Rothstein, Donatelli, Hughes, Dahlstrom, Cron & Schoenburg, Albuquerque, NM, for amicus curiae.

Before MOORE, FEINBERG, FN* and ANDERSON, Circuit Judges.

FN* The Honorable Wilfred Feinberg, United States Circuit Judge, Second Circuit Court of Appeals, sitting by designation.

STEPHEN H. ANDERSON, Circuit Judge.

The United States appeals the denial of its motion to reconsider the district court's suppression order.

The government argues that the challenged dog sniff of Keith Ludwig's car was not a search under the Fourth Amendment, and that no warrant was required to search the car after the dog alerted. We agree and reverse.

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BACKGROUND

At about 11:15 p.m. on December 12, 1992, Joel Nickles, a Border Patrol agent at the permanent checkpoint near Truth or Consequences, New Mexico, walked a trained narcotics dog through the parking lot of the nearby Super 8 Motel to see if the dog would find any contraband. R. Vol. II at 5-6, 16. Less than a week earlier the motel manager had given the Border Patrol permission to walk dogs through the motel parking lot for this purpose. R. Vol. II at 40-41.

As Nickles and the dog were walking through the lot, the dog pulled Nickles over to Keith Ludwig's Chevrolet Impala and alerted to the trunk, indicating that illegal drugs were in the trunk. R. Vol. II at 7. Around half an hour later Border Patrol agents began surveillance of the car, which continued through the night until Ludwig first approached his car the next morning at 10:00 a.m.

Agent Phillip Sanchez, who had been surveilling the car, approached Ludwig five minutes later and identified himself. Ludwig acknowledged that the car was his, but denied the agent's requests to inspect the car and look in the trunk. Sanchez then directed Nickles to have the dog sniff the car again, and the dog again alerted to the trunk. *1526 When Ludwig refused to open the trunk, Sanchez took the keys from the ignition, opened the trunk, and found several large bags containing marijuana. R. Vol. II at 32-33.

Ludwig was indicted for possession with intent to distribute less than fifty kilograms of marijuana in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(D). After pleading not guilty, Ludwig moved to suppress all the evidence seized by the Border Patrol agents. The district court held an evidentiary hearing but did not hear Ludwig's evidence, granting the motion after the government's evidence on the grounds that the agents should have sought a search warrant because there were no exigent circumstances. R. Vol. II at 44-45. The court subsequently denied the government's motion to reconsider, from which the government appeals.

DISCUSSION

I. Search of Parking Lot

[1] Nickles' entry into the motel parking lot with the dog was a search under the Fourth Amendment if it intruded on a legitimate expectation of privacy. *See Rakas v. Illinois*, 439 U.S. 128, 143 & n. 12, 99 S.Ct. 421, 430 & n. 12, 58 L.Ed.2d 387 (1978); *United States v. Reed*, 733 F.2d 492, 501 (8th Cir.1984) ("Whether a police officer has commenced a 'search' turns not on his subjective intent to conduct a search and seizure, but rather whether he has in fact invaded an area [in] which the defendant harbors a reasonable expectation of privacy."). Ludwig "bears the burden of proving not only that the search ... was illegal, but also that he had a legitimate expectation of privacy [in the parking lot]." *Rawlings v. Kentucky*, 448 U.S. 98, 104, 100 S.Ct. 2556, 2561, 65 L.Ed.2d 633 (1980). Ludwig has not proven that he or even the motel owner had a legitimate expectation of privacy in the lot. As the surveillance from across the street indicates, the parking lot was open and visible from the public roads bordering it. Ludwig has produced no evidence that the lot was fenced, that a gate prevented unauthorized entry, or even that signs restricted entry to the parking lot. Neither the owner nor a guest could reasonably expect that such a parking lot would be private. *See, e.g., Katz v. United States*, 389 U.S. 347, 351, 88 S.Ct. 507, 511, 19 L.Ed.2d 576 (1967) ("What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection."); *United States v. Dunkel*, 900 F.2d 105, 107 (7th Cir.1990) (explaining that even though parking lot was curtilage of private office, defendant did not have legitimate expectation of privacy in parking lot that was open to invitees of eight tenants and was not fenced), *vacated on other grounds*, 498 U.S. 1043, 111 S.Ct. 747, 112 L.Ed.2d 768 (1991); *United States v. Reed*, 733 F.2d at 501 (holding that police officer's initial entry into business parking lot was not a search where lot was bound on three sides by public streets and visible from streets on two sides, fenced gate was completely open to public street, and there was no indication that lot was private to owners and

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those specifically authorized); *United States v. Edmonds*, 611 F.2d 1386, 1388 (5th Cir.1980) (finding no legitimate privacy expectation in business loading dock and parking lot). The entry into the parking lot therefore was not a search.

[2] Ludwig suggests that he had a separate privacy interest in some portion of the parking lot that he rented along with his room for the night. Even if Ludwig did rent a parking space with his room, he would have no more expectation of privacy in a particular parking space than he or the motel owner had in the lot generally. His parking space was open to the street just as the rest of the lot was, as well as open and visible from the rest of the parking lot where the agents entered lawfully with the motel manager's consent. See *United States v. Burns*, 624 F.2d 95, 100 (10th Cir.) ("Nor is it a search when a law enforcement officer makes visual observations from a vantage point he rightfully occupies. This applies also to perceptions derived from hearing or smelling."), *cert. denied*, 449 U.S. 954, 101 S.Ct. 361, 66 L.Ed.2d 219 (1980).

II. Dog Sniff

[3] [4] Ludwig also suggests that the dog sniffs of his car were unreasonable searches *1527 because the agents had no reason to suspect that there were drugs in his car. Although the Border Patrol generally knew that the motel was a staging area for smugglers, Nickles initially did not have any reasonable suspicion that Ludwig's car contained drugs. He entered the lot with the narcotics dog routinely to sniff all the cars in the lot, without any particular suspicion. This case thus presents the previously unanswered question whether random dog sniffing of vehicles and other objects without prior lawful detention or reasonable suspicion violates the Fourth Amendment. See *United States v. Morales-Zamora*, 914 F.2d 200, 205 (10th Cir.1990). We hold that even such random and suspicionless dog sniffs are not searches subject to the Fourth Amendment. ^{FN1}

FN1. Of course, the government agent may not unlawfully enter an area in order to

conduct such a dog sniff. The physical entry itself may intrude on a legitimate expectation of privacy. This requires separate analysis, however, and we have explained above that the agents' entry into the parking lot and Ludwig's parking space did not intrude on a legitimate expectation of privacy and therefore was not a search under the Fourth Amendment.

[5] [6] The Fourth Amendment protects a subjective expectation of privacy only if society recognizes that expectation as reasonable or justifiable. *Oliver v. United States*, 466 U.S. 170, 177, 104 S.Ct. 1735, 80 L.Ed.2d 214 (1984); *Smith v. Maryland*, 442 U.S. 735, 740, 99 S.Ct. 2577, 2580, 61 L.Ed.2d 220 (1979). Regardless of whether Ludwig subjectively expected that the drugs in his trunk would not be smelled, society does not recognize that expectation as legitimate. As we observed in *Morales-Zamora*, "there is no intrusion on legitimate privacy interests (and hence no 'search') where the only information revealed is limited to contraband items." *Morales-Zamora*, 914 F.2d at 204-05; see also *Jacobsen*, 466 U.S. 109, 123-24, 104 S.Ct. 1652, 1661, 80 L.Ed.2d 85 (1984) (holding that a chemical test that reveals only whether a substance is cocaine is not a search because it reveals no private fact other than whether the substance is contraband); *United States v. Place*, 462 U.S. 696, 706-07, 103 S.Ct. 2637, 2663, 77 L.Ed.2d 110 (1983) (holding that dog sniff is not a search because it is unique in that it does not intrude on or disclose any information other than whether contraband is present); *United States v. Colyer*, 878 F.2d 469, 474 (D.C.Cir.1989) ("[A] possessor of contraband can maintain no legitimate expectation that its presence will not be revealed."). This is no less true where the authorities had no basis for suspecting or detaining the person or his car. We therefore hold that the dog sniff of Ludwig's car was not a search.

III. Search of Trunk After Dog Alert

A. Probable Cause to Search

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[7] Ludwig suggests that dog sniffs are not as reliable as courts often assume, and therefore the dog alert did not give the agents probable cause to open and search Ludwig's trunk. He also suggests that the district court's denial of the reconsideration motion implied a factual finding that the dog alerts were unreliable and thus did not give probable cause. We do not think the district court implied such a finding, but clearly based its order on the belief that a warrant was required. We therefore review this contention de novo, and conclude that the dog alert did give the agents probable cause to search Ludwig's trunk.

[8] Probable cause means that "there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates*, 462 U.S. 213, 238, 103 S.Ct. 2317, 2332, 76 L.Ed.2d 527 (1983). Although Ludwig cites several cases of mistaken dog alerts, a dog alert usually is at least as reliable as many other sources of probable cause and is certainly reliable enough to create a "fair probability" that there is contraband. We therefore have held in several cases that a dog alert without more gave probable cause for searches and seizures. See *Morales-Zamora*, 914 F.2d at 205 ("We need not reach the issue of consent because probable cause to search was supplied when the dog alerted to the vehicles."); *United States v. Stone*, 866 F.2d 359, 364 (10th Cir.1989) ("Once the dog 'keyed,' the police had probable cause to believe the automobile contained narcotics."); *United States v. Williams*, 726 F.2d 661, 663 (10th Cir.) (declaring that dog alert to luggage alone gives *1528 probable cause for arrest), *cert. denied*, 467 U.S. 1245, 104 S.Ct. 3523, 82 L.Ed.2d 830 (1984); cf. *Blair v. Commonwealth*, 181 Ky. 218, 204 S.W. 67, 68 (1918) (stating that bloodhound evidence "was looked upon with favor as early as the twelfth century" and relating the declaration of Richard I of England: "Dress yonder Marquis [who had stolen the banner of England] in what peacock robes you will, disguise his appearance, alter his complexion with drugs and washes, hide himself amidst a hundred men; I will yet pawn my scepter that the hound detects him"). A dog alert might not give probable cause if the particular dog had a poor accuracy record, but the evidence shows that the dog in this case has never falsely alerted. R. Vol.

II at 13.

[9] [10] Ludwig also questions whether there ever was a dog alert giving probable cause for the search of his trunk. He argues that the first dog alert could not give probable cause because surveillance was not constant and because of the passage of time before the search. The second alert, he contends, was not sufficiently reliable because Nickles and Sanchez gave different accounts of the alert. As to the first alert, we do not think the half hour between the alert and the beginning of surveillance resulted in less than a fair probability that there were drugs in the car as indicated by the dog alert. The passage of time alone is irrelevant, since the drugs would remain in the car unless someone removed them. As to the second alert, Sanchez testified that he did not know how dogs alerted, was not watching the dog that closely, and may not have remembered exactly what the dog did while sniffing and alerting. Nickles, the dog's handler, testified that he knows how his dog alerts and that his dog did so after the second sniff. The factual discrepancies between their accounts do not support the conclusion that the alert never happened or was itself unreliable.

B. Search of Trunk Without Warrant

[11] Finally, Ludwig argues and the district court held that the search was unreasonable because the agents did not first obtain a warrant. We review this conclusion of law de novo. *United States v. Lugo*, 978 F.2d 631, 634 (10th Cir.1992). We hold that no warrant was required.

[12] [13] A warrantless search of an automobile is reasonable if there is probable cause to believe it contains contraband. *United States v. Ross*, 456 U.S. 798, 809, 102 S.Ct. 2157, 2165, 72 L.Ed.2d 572 (1982). The district court incorrectly reasoned that this exception does not apply if there was no apparent exigency in a particular case. Although the automobile exception is based in part on exigency, "the justification to conduct such a warrantless search does not vanish once the car has been immobilized; nor does it depend upon a reviewing court's assessment of the likelihood in

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each particular case that the car would have been driven away, or that its contents would have been tampered with, during the period required for the police to obtain a warrant." *Michigan v. Thomas*, 458 U.S. 259, 261, 102 S.Ct. 3079, 3081, 73 L.Ed.2d 750 (1982) (per curiam) (footnote omitted). Ludwig argues that this case is controlled by *Coolidge v. New Hampshire*, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971) (holding unreasonable the warrantless search of a car in a driveway after suspect was arrested). *Coolidge* differs in several significant respects, however, the most important of which is that in *Coolidge* the suspect had been arrested before the search, whereas Ludwig was arrested after the search. Unlike *Coolidge*, Ludwig could have driven off before the search. The agents were not required to detain him and the car while they sought a warrant to open the trunk. See *Chambers v. Maroney*, 399 U.S. 42, 51-52, 90 S.Ct. 1975, 1981-82, 26 L.Ed.2d 419 (1970) (holding that police were not required to detain car while seeking warrant to search it). The warrantless search of Ludwig's car therefore is not unreasonable even if there was little or no risk that Ludwig or a confederate would come out of the motel and drive away. If police have probable cause to search a car, they need not get a search warrant first even if they have time and opportunity. *United States v. Crabb*, 952 F.2d 1245, 1246 (10th Cir.1991), cert. denied, 504 U.S. 925, 112 S.Ct. 1981, 118 L.Ed.2d 579 (1992).

*1529 [14] Ludwig also suggests that the auto exception does not apply here because his car was neither on the highway nor was it "readily capable of such use and ... found stationary in a place not regularly used for residential purposes-temporary or otherwise." *California v. Carney*, 471 U.S. 386, 392, 105 S.Ct. 2066, 2070, 85 L.Ed.2d 406 (1985). He presumably admits that the car was readily capable of use on the highway, but apparently contends that it was in a place regularly used for temporary residential purposes. If so, Ludwig misunderstands *Carney*. The question is only whether the "vehicle was so situated that an objective observer would conclude that it was being used not as a residence, but as a vehicle." *Id.* at 393, 105 S.Ct. at 2070. Ludwig's car itself was obviously not being used as a residence. Nothing

about the car itself suggested that it was being used as a residence, nor was it the type of vehicle commonly used as a residence. Furthermore, it was parked at a motel, suggesting that the driver was residing in the motel rather than the car. A motel parking lot is not the type of place one typically might park a vehicle that he is going to use as a residence.

IV. Remand for Ludwig's Evidence

[15] The district court did not hear Ludwig's evidence at the suppression hearing. Ludwig asks that if we reverse we remand so that he may present his evidence. Appellee's Br. at 22. We agree that Ludwig should be given an opportunity to present his evidence. See *Fulton v. L & N Consultants, Inc.*, 715 F.2d 1413, 1421 (10th Cir.1982) (suggesting that the court should remand for further evidence where the trial court prematurely stopped the presentation of evidence because it was already sufficient to support a ruling that proved to be erroneous).

We therefore reverse the district court's denial of the motion to reconsider its suppression order and remand for further proceedings consistent with this opinion.

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United States Court of Appeals, Ninth Circuit.
UNITED STATES of America, Plaintiff-Appellee,
v.

Charles E. HAMILTON, Defendant-Appellant.
UNITED STATES of America, Plaintiff-Appellee,
v.

Charles Eugene HAMILTON, Defendant-Appellant.
Nos. 84-5060, 84-5063.

Argued and Submitted Nov. 5, 1985.
Decided June 19, 1986.

Defendant was convicted in the United States District Court for the Central District of California, Malcolm M. Lucas, J., of seven counts of armed robbery, and he appealed. The Court of Appeals, Wallace, Circuit Judge, held that: (1) defendant was not denied effective assistance of counsel; (2) district judge's decision not to recuse himself was not abuse of discretion; and (3) FBI agents could in good faith rely on homeowner's apparent authority to consent to search of motor home which was parked in homeowner's driveway.

Affirmed.

Hug, Circuit Judge, filed opinion concurring in part and dissenting in part.

Cynthia Holcomb Hall, Circuit Judge, filed opinion concurring in part and dissenting in part.

West Headnotes

[1] Criminal Law 110 ⇨ 641.13(2.1)

110 Criminal Law

110XX Trial

110XX(B) Course and Conduct of Trial in
General

110k641 Counsel for Accused

110k641.13 Adequacy of

Representation

110k641.13(2) Particular Cases and

Problems

110k641.13(2.1) k. In General.

Most Cited Cases

(Formerly 110k641.13(2))

Defendant was not denied effective assistance of counsel due to his alleged inability to communicate with his appointed attorney, where any lack of communication between defendant and his attorney prior to trial resulted from defendant's unwillingness to cooperate and his efforts to delay trial. U.S.C.A. Const.Amend. 6.

[2] Criminal Law 110 ⇨ 641.13(6)

110 Criminal Law

110XX Trial

110XX(B) Course and Conduct of Trial in
General

110k641 Counsel for Accused

110k641.13 Adequacy of
Representation

110k641.13(2) Particular Cases and
Problems

110k641.13(6) k. Evidence;
Procurement, Presentation and Objections. Most
Cited Cases

Defendant was not denied effective assistance of counsel due to his appointed attorney's failure to present a defense, absent showing of what evidence should have been presented. U.S.C.A. Const.Amend. 6.

[3] Judges 227 ⇨ 51(4)

227 Judges

227IV Disqualification to Act

227k51 Objections to Judge, and Proceedings
Thereon

227k51(4) k. Determination of Objections.
Most Cited Cases

District judge's decision not to recuse himself on basis that defendant had appeared before him in a

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state court proceeding 15 years earlier was not abuse of discretion, where district judge had no recollection of the state court proceeding. 28 U.S.C.A. § 455(a).

[4] **Criminal Law 110** ⇨ **1035(3)**

110 Criminal Law
110XXIV Review
110XXIV(E) Presentation and Reservation in Lower Court of Grounds of Review
110XXIV(E)1 In General
110k1035 Proceedings at Trial in General
110k1035(3) k. Course and Conduct of Trial in General. Most Cited Cases
Defendant's claim that he was deprived of right to voluntarily absent himself from trial was not preserved for appeal, where defendant decided to be present during trial because he was required to be in holding area of courthouse to facilitate in-court identification. Fed.Rules Civ.Proc.Rule 43, 28 U.S.C.A.

[5] **Criminal Law 110** ⇨ **339.7(4)**

110 Criminal Law
110XVII Evidence
110XVII(D) Facts in Issue and Relevance
110k339.5 Identity of Accused
110k339.7 Photographs and Drawings
110k339.7(4) k. Number and Character of Pictures. Most Cited Cases
Photographic display used during investigation was not unduly suggestive despite defendant's contention that two of six photographs used were of same individual and two others were of individuals nearly identical in appearance.

[6] **Criminal Law 110** ⇨ **778(4)**

110 Criminal Law
110XX Trial
110XX(G) Instructions: Necessity, Requisites, and Sufficiency
110k778 Presumptions and Burden of Proof
110k778(4) k. Sufficiency of Instructions as to Presumption of Innocence. Most

Cited Cases

Criminal Law 110 ⇨ **789(4)**

110 Criminal Law
110XX Trial
110XX(G) Instructions: Necessity, Requisites, and Sufficiency
110k789 Reasonable Doubt
110k789(4) k. Sufficiency of Instructions as to Proof Beyond Reasonable Doubt. Most Cited Cases
In armed robbery prosecution, jury was properly instructed that defendant was presumed innocent and that he should be acquitted if there was reasonable doubt as to his guilt, despite contention that certain phrases in the instructions urged a unanimous verdict and presumed that jury would return with guilty verdict. Fed.Rules Cr.Proc.Rules 30, 52(b), 18 U.S.C.A.; U.S.C.A. Const.Amends. 5, 14.

[7] **Searches and Seizures 349** ⇨ **174**

349 Searches and Seizures
349V Waiver and Consent
349k173 Persons Giving Consent
349k174 k. Owners of Property; Hosts and Guests. Most Cited Cases
FBI agents could in good faith rely on homeowner's apparent authority to consent to search of motor home which was parked in homeowner's driveway, where motor home had been driven to home by homeowner's grandson, was occupied by teenagers under her apparent supervision, and was connected to her home by an electrical cord. U.S.C.A. Const.Amend. 4.

[8] **Searches and Seizures 349** ⇨ **60.1**

349 Searches and Seizures
349I In General
349k60 Motor Vehicles
349k60.1 k. In General. Most Cited Cases
(Formerly 349k60)
FBI agents' search of motor home parked in homeowner's driveway fell within scope of vehicle exception to warrant requirement, where motor home was moved night before search was

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conducted and had easy access to public road, although motor home was connected to electrical utilities by means of an extension cord. U.S.C.A. Const.Amend. 4.

*838 William Fahey, Asst. U.S. Atty., Los Angeles, Cal., for plaintiff-appellee.
Robert L. Allen, Los Angeles, Cal., for defendant-appellant.

Appeal from the United States District Court for the Central District of California.

Before WALLACE, HUG and HALL, Circuit Judges.

WALLACE, Circuit Judge:

Hamilton appeals from his conviction on seven counts of armed robbery in violation of 18 U.S.C. § 2113(a), (d). Hamilton argues that he was denied his sixth amendment right to effective assistance of counsel, that the district judge should have recused himself, that he was deprived of the right to be absent from trial, that a photographic spread was unduly suggestive, that parts of three jury instructions were prejudicial, and that the district judge erred in admitting certain evidence. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

I

On July 12, 1983, a man robbed the Union Federal Savings and Loan of Newbury Park, California. A Ventura County, California, deputy sheriff heard a broadcast reporting that the robbery had occurred and that the suspect was a black man driving a white Cadillac.

A short time thereafter, the deputy sheriff saw a vehicle and driver matching the description given in the broadcast. With the assistance of other law enforcement officers, he stopped the vehicle and ordered the occupants to step out. Hamilton got out of the vehicle, along with Sheila Davis, a female co-defendant. Witnesses at the bank identified Hamilton as the robber, and he was arrested.

The next day, Federal Bureau of Investigation (FBI) agent Ahles contacted Gregory Jones, the owner of the white Cadillac that Hamilton was driving when he was arrested. Jones told agent Ahles that he had loaned the car to Davis for a few hours on the day of the robbery, and that he had gone to Davis's home to look for it when the Cadillac had not been returned. Jones stated that he had observed a motor home at Davis's premises and had noticed people removing articles from the house and placing them within the motor home. Jones gave agent Ahles the license plate number of the motor home and told him that the motor home had been moved and could be found at an address on Van Ness Avenue in Los Angeles. Agent Ahles determined from an investigation of the license plate number that the owner of the motor home was Frank Crawford.

Agent Ahles notified FBI agents Powers and Flanigan by radio of the location of the motor home and described the evidence he thought the agents would find inside. Agents Powers and Flanigan found the motor home at the Van Ness address. They contacted their office by radio and were advised of the name and address of a third person who was the registered owner of the motor home, and were informed that the registration was not current.

When the agents approached the home, they were greeted by Hamilton's mother, Claudia Cosbie. The motor home was parked in the driveway of Cosbie's home and was attached to the home's electric utilities by an extension cord. The door of the motor home was open and two teenage girls were inside listening to the radio. The agents observed Cosbie enter the motor*839 home several times; on at least one occasion, Cosbie instructed the two teenage girls to cooperate with the questions of the agents. Cosbie told the agents that she did not know who owned the motor home but that it was driven onto her property by a grandson and that she believed it was owned by Hamilton, her son.

Based on these circumstances, the agents believed that Cosbie had free and complete access to the motor home. Consequently, they asked her if they could search the motor home, and she consented.

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The search produced several articles of clothing, which later were introduced at trial.

Hamilton was charged in two indictments with ten counts of armed robbery in violation of 18 U.S.C. § 2113(a), (d). Prior to trial, Hamilton filed three motions to relieve his court-appointed counsel and one motion to suppress evidence, all of which were denied. The government's motion to dismiss count four of the first indictment was granted. Counts six and seven of the first indictment were severed prior to trial and later dismissed. A jury found Hamilton guilty of seven counts of armed robbery, and he was sentenced to 40 years in prison.

II

Hamilton first contends that he was denied his sixth amendment right to effective assistance of counsel because his attorney's performance was deficient and prejudicial. See *Strickland v. Washington*, 466 U.S. 668, 685-86, 104 S.Ct. 2052, 2063-64, 80 L.Ed.2d 674 (1984) (*Strickland*). Our review of counsel's performance is highly deferential and we "must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Id.* at 689, 104 S.Ct. at 2066.

[1] Hamilton argues that his appointed attorney should not have represented him because they were unable to communicate. Our review of the record indicates, however, that any lack of communication between Hamilton and his attorney prior to trial resulted from Hamilton's unwillingness to cooperate and his efforts to delay the trial. Once trial began, Hamilton cooperated with his attorney, assisted in selecting the jury, made suggestions for cross-examining witnesses, and even complimented his attorney on his efforts to defend him.

Hamilton next argues that his attorney's performance was deficient because he did not object to three jury instructions and to the trial judge's refusal to recuse himself. Since these objections are without merit, see *infra*, Hamilton's attorney did not err in failing to raise them.

[2] Hamilton also contends that his attorney failed to present a defense at the close of the government's case. Hamilton never indicates, however, what evidence should have been presented. Under these facts, all Hamilton's attorney could do was what he did do: cross-examine the government's witnesses. Since Hamilton has failed to prove that his attorney's performance was deficient, we need not address whether it was prejudicial. See *Strickland*, 466 U.S. at 697, 104 S.Ct. at 2069.

III

[3] Hamilton next argues that the district judge should have recused himself because Hamilton appeared before him in a state court proceeding 15 years earlier. We will reverse a district judge's decision not to recuse himself only if the decision was an abuse of discretion. *United States v. DeLuca*, 692 F.2d 1277, 1282 (9th Cir.1982). The district judge stated that he had no recollection of the 15-year-old state court proceeding. We can find no reasonable basis to question the district judge's impartiality, see 28 U.S.C. § 455(a); *Trotter v. International Longshoremen's Union, Local 13*, 704 F.2d 1141, 1144 (9th Cir.1983), and the record contains no evidence of bias or prejudice, see 28 U.S.C. § 455(b)(1). Therefore, the district judge did not abuse his discretion in declining to recuse himself.

840IV

[4] Hamilton also contends that he was deprived of the right voluntarily to absent himself from trial. No cases are cited by Hamilton in support of this unique contention. To the contrary, the Third Circuit has concluded that a defendant has neither a due process right nor a right stemming from Fed.R.Civ.P. 43 to be absent from trial. See *United States v. Moore*, 466 F.2d 547, 548 (3d Cir.1972), cert. denied, 409 U.S. 1111, 93 S.Ct. 920, 34 L.Ed.2d 692 (1973). We need not decide, however, whether we agree with the Third Circuit because this record does not require us to do so. The district judge allowed Hamilton to be absent except for in-court identification by witnesses.

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Hamilton was required to be in the holding area of the courthouse to facilitate this. Because he was in the court building anyway, Hamilton decided to be present during the trial. Thus, he failed to preserve his claim to the alleged right for purposes of this appeal.

V

[5] Hamilton next argues that the photographic display used in the investigation violated his due process rights. Due process, however, is not violated unless the photographic display results in a very substantial likelihood of irreparable misidentification in light of the totality of circumstances. See *United States v. Field*, 625 F.2d 862, 865-66 (9th Cir.1980). A suggestive photographic display "will not be held to violate due process if sufficient indicia of reliability are present." *United States v. Hanigan*, 681 F.2d 1127, 1133 (9th Cir.1982), cert. denied, 459 U.S. 1203, 103 S.Ct. 1189, 75 L.Ed.2d 435 (1983).

Hamilton contends that the photographic display was unduly suggestive because two of the six photographs used were of the same individual and two others were of individuals nearly identical in appearance. We have reviewed the photographs and agree with the district court that even if the display included photographs of only five individuals instead of six, it was not unduly suggestive. See *United States v. Bagley*, 772 F.2d 482, 493 (9th Cir.1985), cert. denied, --- U.S. ---, 106 S.Ct. 1215, 89 L.Ed.2d 326 (1986).

VI

[6] Hamilton contends that parts of three jury instructions were prejudicial. He argues that certain phrases in the three instructions "urge [d] a unanimous verdict" and "presume[d] that the jury [would] return with a guilty verdict." Hamilton did not object to the three instructions, however, as required by Fed.R.Crim.P. 30. Therefore, we will reverse only if the allegedly prejudicial phrases constituted plain error. See Fed.R.Crim.P. 52(b). "Plain error exists only if it is highly probable that

the error materially affected the verdict." *United States v. Williams*, 685 F.2d 319, 321 (9th Cir.1982). "[R]eversal for plain error is appropriate only when necessary to safeguard the integrity and reputation of the judicial process or to forestall a miscarriage of justice." *United States v. Lancellotti*, 761 F.2d 1363, 1367 (9th Cir.1985).

The jury instructions given by the district judge were the standard ones used in this type of case and, taken in context, they do not have an improper meaning. The jury was properly instructed that Hamilton was presumed innocent and that he should be acquitted if there was a reasonable doubt as to his guilt. Consequently, there was no error in the jury instructions.

VII

Hamilton contends that the district court erred in admitting certain items of evidence seized during the warrantless search of the motor home. We conclude that the evidence was properly admitted because agents Powers and Flanigan could in good faith reasonably rely on Cosbie's apparent authority to consent to the search of the motor home or, in the alternative, because the search of the motor home falls within the "vehicle exception" to the warrant clause.

841A.

[7] Hamilton contends that the district court erred in concluding that agents Powers and Flanigan reasonably could have relied on Cosbie's apparent authority to consent to the search of the motor home. It is not clear whether we review a district court's finding of apparent authority to consent de novo or for clear error. In *United States v. Dubrofsky*, 581 F.2d 208 (9th Cir.1978) (*Dubrofsky*), the issue of voluntariness of the consent as well as authority to give the consent was before us. We reviewed the voluntariness issue pursuant to the clearly erroneous standard. *Id.* at 212; see also *LaDuke v. Nelson*, 762 F.2d 1318, 1321 (9th Cir.1985); *United States v. Caicedo-Guarnizo*, 723 F.2d 1420, 1423 (9th Cir.1984). It appears from a

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reading of *Dubrofsky* that our court also applied the clear error test to the issue of authority to consent to the search. 581 F.2d at 212.

Subsequently, however, in *United States v. McConney*, 728 F.2d 1195 (9th Cir.) (en banc) (*McConney*), cert. denied, --- U.S. ---, 105 S.Ct. 101, 83 L.Ed.2d 46 (1984), we created a method of analysis in determining the standard of review:

If application of the rule of law to the facts requires an inquiry that is "essentially factual," one that is founded "on the application of the fact-finding tribunal's experience with the mainsprings of human conduct," the concerns of judicial administration will favor the district court, and the district court's determination should be classified as one of fact reviewable under the clearly erroneous standard. If, on the other hand, the question requires us to consider legal concepts in the mix of fact and law and to exercise judgment about the values that animate legal principles, then the concerns of judicial administration will favor the appellate court, and the question should be classified as one of law and reviewed de novo.

Id. at 1202 (citations omitted). It may be that the Supreme Court would treat the issue as essentially factual. In *Thompson v. Louisiana*, 469 U.S. 17, 105 S.Ct. 409, 83 L.Ed.2d 246 (1984) (per curiam), the Court treated an argument raised by the State dealing with consent. The Louisiana Supreme Court attempted "to support its diminished expectation of privacy argument by reference to the daughter's 'apparent authority' over the premises when she originally permitted the police to enter." *Id.*, 105 S.Ct. at 412. Although the issue was not reached, the Court's response in dicta seems to show that the Court would review the issue as essentially factual: "Because the issue of consent is ordinarily a factual issue unsuitable for our consideration in the first instance, we express no opinion as to whether the search at issue here might be justified as consensual." *Id.*

It is unnecessary in this case, however, to decide whether the issue of apparent authority to consent is essentially factual and thus whether our standard of review should be de novo or for clear error. Under either standard, we would conclude that a valid

consent was given.

The fourth amendment prohibits searches conducted without a warrant unless they fall within a "few specifically established and well-delineated exceptions." *Schneckloth v. Bustamonte*, 412 U.S. 218, 219, 93 S.Ct. 2041, 2043, 36 L.Ed.2d 854 (1973) (*Schneckloth*), quoting *Katz v. United States*, 389 U.S. 347, 357, 88 S.Ct. 507, 514, 19 L.Ed.2d 576 (1967). One such exception is a search conducted pursuant to proper consent voluntarily given. See *United States v. Matlock*, 415 U.S. 164, 165-66, 94 S.Ct. 988, 990-91, 39 L.Ed.2d 242 (1974) (*Matlock*); *Schneckloth*, 412 U.S. at 219, 93 S.Ct. at 2043. Proof of voluntary consent, however, is not limited to proof that consent was given by the defendant. Valid consent to search can be "obtained from a third party who possessed common authority over or other sufficient relationship to the premises." *Matlock*, 415 U.S. at 171, 94 S.Ct. at 993.

We need not determine whether Cosbie actually possessed common authority over or other sufficient relationship to the motor home in order to affirm the district judge's *842 denial of Hamilton's motion to suppress evidence. Rather, we must determine whether agents Powers and Flanigan "in good faith relie[d] on what reasonably, if mistakenly, appear[ed] to be [Cosbie's] authority to consent to the search." *United States v. Sledge*, 650 F.2d 1075, 1081 (9th Cir.1981).

Agents Powers and Flanigan found the motor home parked in the driveway of Cosbie's home with the door open. The motor home had been driven to her home by a grandson, was occupied by teenagers under Cosbie's apparent supervision, and was connected to her home by an electrical cord. Cosbie entered the motor home several times in the presence of the agents. Based on these facts, the district judge did not err in finding that the agents reasonably could have concluded that Cosbie had either common authority over or a sufficient relationship to the motor home to give consent. See *United States v. Miller*, 688 F.2d 652, 658 (9th Cir.1982) (son had sufficient access and control to consent to search of father's shop and surrounding area); *Dubrofsky*, 581 F.2d at 212 (party who has

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key and access throughout can consent to search); *United States v. Gulma*, 563 F.2d 386, 389 (9th Cir.1977) (possessor of motel key could consent to search even though he had never been to the room and stated that it was not his); *United States v. Murphy*, 506 F.2d 529, 530 (9th Cir.1974) (per curiam) (possessor of key to warehouse could give consent even though he had key only when performing work on the premises), *cert. denied*, 420 U.S. 996, 95 S.Ct. 1433, 43 L.Ed.2d 676 (1975).

Hamilton argues that the agents could not reasonably rely on Cosbie's authority to consent because she did not know who ultimately owned the motor home. We disagree. Knowledge of ultimate ownership is not a necessary prerequisite to a valid consent. The inability to declare who owns a home, an apartment, or a motor home, although a relevant consideration, does not prevent government representatives from reasonably relying on an individual's apparent authority to consent so long as sufficient other facts exist to indicate common authority over or a sufficient relationship to the premises.

B.

[8] Even if we were to conclude that the district court did err in finding that the agents reasonably could rely on Cosbie's apparent authority to consent, we still would affirm the district judge's denial of the motion to suppress. An additional exception to the warrant clause is the long-recognized "vehicle exception." See *Chambers v. Maroney*, 399 U.S. 42, 51-52, 90 S.Ct. 1975, 1981-82, 26 L.Ed.2d 419 (1970); *Carroll v. United States*, 267 U.S. 132, 153, 45 S.Ct. 280, 285, 69 L.Ed. 543 (1925) (*Carroll*). The vehicle exception has two principal justifications. First, automobiles or other vehicles can be moved quickly outside the jurisdiction of the magistrate from whom the warrant must be sought. See *South Dakota v. Opperman*, 428 U.S. 364, 367, 96 S.Ct. 3092, 3096, 49 L.Ed.2d 1000 (1976) (*Opperman*); *Carroll*, 267 U.S. at 153, 45 S.Ct. at 285. Second, the expectation of privacy in one's vehicle is reduced by the pervasive regulations governing vehicles capable of traveling upon public roads.

See *Opperman*, 428 U.S. at 367-68, 96 S.Ct. at 3096-97; *Cady v. Dombrowski*, 413 U.S. 433, 440-41, 93 S.Ct. 2523, 2527-28, 37 L.Ed.2d 706 (1973).

In *California v. Carney*, 471 U.S. 386, 105 S.Ct. 2066, 85 L.Ed.2d 406 (1985) (*Carney*), the Supreme Court held that under certain circumstances a motor home can fall within the vehicle exception because it evokes concerns similar to those surrounding automobiles and other readily-mobile highway vehicles. The Court emphasized that when a vehicle is readily capable of use on the highways "and is found stationary in a place not regularly used for residential purposes-temporary or otherwise-the two justifications come into play." *Id.*, 105 S.Ct. at 2070. The fact that a motor home might be used as a residence is not controlling. *Id.* at 2070-71. Thus, warrantless searches of motor homes are not unreasonable under the *843 fourth amendment when based upon probable cause existing at the time of the search.

The Court recognized, however, that extending the vehicle exception to motor homes would not be appropriate under some circumstances. Consequently, the Court limited its decision by stating:

We need not pass on the application of the vehicle exception to a motor home that is situated in a way or place that objectively indicates that it is being used as a residence. Among the factors that might be relevant in determining whether a warrant would be required in such a circumstance is its location, whether the vehicle is readily mobile or instead, for instance, elevated on blocks, whether the vehicle is licensed, whether it is connected to utilities, and whether it has convenient access to a public road.

Id. at 2071 n. 3.

Carney involved the search of a motor home located in a public parking lot in downtown San Diego, California. This case requires us to consider the application of the vehicle exception when the motor home is located in a private residential driveway and is connected to the residence by an extension cord. Because there is

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no showing that the agents were on the premises illegally, we need not decide what, if any, limitations restrict a law enforcement officer's ability to enter onto privately-owned land to conduct a vehicle search. See, e.g., *United States v. Moscatiello*, 771 F.2d 589, 599-600 (1st Cir.1985); *United States v. Amuny*, 767 F.2d 1113, 1125-28 (5th Cir.1985).

We find that the search of the motor home falls within the scope of the vehicle exception. The mobility of the motor home is amply demonstrated by the fact that it was moved the night before the search was conducted. Although the registration had lapsed, the motor home was licensed with the State of California. Because it was located in a residential driveway, it had easy access to a public road. The fact that the motor home was attached to "utilities" in the broad sense is not very significant. A connection to electrical utilities by means of an extension cord is hardly the kind of "pipe and drain" connection that would render the motor home more permanent and less mobile as was contemplated by the Court in *Carney*.

Hamilton does not contend that the police lacked probable cause to arrest him. His connection with the robberies with which he was charged was well-established and would have supported a warrant to search his residence for evidence of the crimes. Similarly, when the agents learned of articles of clothing being removed from the residence and placed in the motor home, probable cause existed to search the motor home as well. Therefore, we conclude that the articles of clothing seized during the warrantless search of the motor home could have been properly admitted under the vehicle exception.

AFFIRMED.

HUG, Circuit Judge, concurring in part and dissenting in part.

I concur in parts I-VI of the majority opinion, and in part VII for the reason expressed in sub-part A. I find it unnecessary to reach the issues in sub-part B.

Were it necessary to reach those issues, I would

dissent, on the ground that this is an unwarranted extension of the "vehicle exception." I see a significant difference in the expectancy of privacy in a motor home located in a public parking lot, such as involved in *California v. Carney*, ---U.S. ---, 105 S.Ct. 2066, 85 L.Ed.2d 406 (1985), and a motor home located in a private driveway under the circumstances involved in this case. Here the motor home was connected with the utilities in the residence. The persons utilizing the motor home were not persons who would be driving the vehicle away before a warrant could be obtained, but teenagers under the supervision of the resident of the house. The location and use being made of this vehicle was much more akin to a functional part of a private residence than to a motor vehicle on the highway, where the vehicle exception is meant to apply.

*844 CYNTHIA HOLCOMB HALL, Circuit Judge, concurring in part and dissenting in part:

I concur in all but Part VII A of the majority opinion. I cannot join in that portion of the opinion because I believe that under the facts of this case the police could not have reasonably believed that Claudia Cosbie had authority to consent to the warrantless search of the motor home.

I

As an initial matter, I disagree with the majority opinion's implication that the issue of whether Cosbie had sufficient authority under the fourth amendment to consent to a search of a motor home should be reviewed under the clearly erroneous standard. In my view, the question of whether Cosbie's consent, freely and voluntarily given, was binding on Hamilton for the purposes of the fourth amendment "requires us to consider abstract legal doctrines, to weigh underlying policy considerations, and to balance competing legal interests." *United States v. McConney*, 728 F.2d 1195, 1205 (9th Cir.) (en banc), cert. denied, ---U.S. ---, 105 S.Ct. 101, 83 L.Ed.2d 46 (1984). It is a question not altogether different from the questions of exigent circumstances and probable cause, questions which this court has already decided warrant de novo review. *Id.* at 1200 n. 4,

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1204-05.

In *Frazier v. Cupp*, 394 U.S. 731, 89 S.Ct. 1420, 22 L.Ed.2d 684 (1969), the police asked the defendant's cousin during the cousin's arrest where they could find the cousin's clothing. The cousin then pointed the police to a duffel bag located within his home. The court concluded that because the cousin had at least joint use of the bag, the police's search of the bag was proper and that belongings of the defendant seized incident to the lawful search were properly admitted. *Id.* at 740, 89 S.Ct. at 1425. The Court's decision is best understood as holding that the cousin had authority to consent to a search of the bag as far as his own belongings were concerned and that, this consent being valid, the clothing of the defendant also seized during the lawful search could also be admitted.

While this decision relied upon certain factual findings dealing with the use of the bag, it also made judgments about property of others seized incident to a lawful search. These questions involve a mix of fact and law. The fact that these questions involve the "exercise [of] judgment about the values that animate legal principles" is born out by the Court's discussion. *McConney*, 728 F.2d at 1202. The defendant claimed that he had given his cousin the use of only certain compartments within the bag. While this *fact* deals with the extent of mutual use, the Court concluded that it was *legally irrelevant* stating:

Petitioner argues that Rawls only had actual permission to use one compartment of the bag and that he had no authority to consent to a search of the other compartments. *We will not, however, engage in such metaphysical subtleties in judging the efficacy of Rawls' consent.*

Frazier, 394 U.S. at 740, 89 S.Ct. at 1425 (emphasis added). The Court noted further that the defendant "*must be taken to have assumed the risk* that Rawls would allow someone else to look inside." *Id.* (emphasis added).

United States v. Matlock, 415 U.S. 164, 94 S.Ct. 988, 39 L.Ed.2d 242 (1974) provides an even stronger example of the inherently legal nature of

the consent issue. The Court stated that the appropriate inquiry in these consent cases requires a finding that the third party "possessed common authority over *or other sufficient relationship* to the premises or effects sought to be inspected." *Matlock*, 415 U.S. at 171, 94 S.Ct. at 993 (emphasis added). While a trial court may be in the best position to determine the actual extent of mutual use, the question of whether these facts constitute a "sufficient relationship" for the purposes of the fourth amendment is an inherently legal one.

These cases, coupled with the teachings of *McConney*, lead me to the conclusion that de novo review is appropriate on the *845 consent issue presented here. Because we have expressly reserved this question, Cosbie's consent is sufficient to support the district court's decision to admit the articles of clothing only if we would reach the same conclusion as the district court after a de novo review of the record. ^{FN1}

FN1. *Thompson v. Louisiana*, 469 U.S. 17, 105 S.Ct. 409, 83 L.Ed.2d 246 (1984) does not compel a different conclusion. In *Thompson*, the police testified that they received no consent to search. The Court noted that any finding of consent in that case would have to be gauged by the standards articulated in *Matlock*.

II

Under a de novo standard of review, I cannot agree with the majority that the agents could reasonably believe that Cosbie had authority to consent to the search.

In *United States v. Dubrofsky*, 581 F.2d 208 (9th Cir.1978), we held that "[a] party who has a key to the premises and access throughout the residence can also give a valid consent to search." *Id.* at 212. I would concede that, absent an express statement to the contrary, actions consistent with ownership or consensual mutual use of the property are sufficient to justify an officer's good faith belief that the third party had authority to consent to a search of the premises. Likewise in *Matlock*, mutual use of the

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premises without indications to the contrary was also sufficient to support a search.

Suppose, however, that in *Dubrofsky* the person having the key to the premises had told the law enforcement officers "I have the key, but I do not own the house and I am only supposed to go inside to feed the dog." I do not think that in this case the police would be justified in having a good faith belief that the person had authority to consent to the search of the premises. Further, the owner of the house would not have "assumed the risk" that law enforcement officers would be admitted.

This case falls in between *Dubrofsky* and the hypothetical posited above. In my opinion, it falls closer to the latter. The actions taken by Cosbie, taken alone, would justify a conclusion that she had mutual use of the property and authority to admit the officers. ^{FN2} Every action she took was consistent with this mutual use, and the conclusion of the FBI officers that she had authority to consent would have been justified.

FN2. As the majority opinion notes, Cosbie entered and exited the motor home several times in the presence of the agents.

The conclusion was not reasonable after Cosbie made an express disclaimer of ownership and after she indicated that she did not know who owned the motor home. The statement called into question her authority to consent based upon mutual use of the property. Cosbie may have had access to the motor home only for narrow and limited purposes, like, for example, moving the motor home so that she could move her vehicle through the driveway. At the very least, the officers should have inquired further about the extent of her access to the motor home.

Further, agents Powers and Flanigan contacted their office before approaching Cosbie at the Van Ness address. They were informed at that time that motor vehicle records showed Frank Crawford as the owner of the motor home, not either Hamilton or Cosbie. The agents made no effort to contact him or to garner his consent to a search of the

vehicle. Powers and Flanigan could not have been surprised when Cosbie stated that she did not know who owned the motor home nor could they have been deceived by Cosbie's statement that she thought the motor home belonged to Hamilton.

The agents knew otherwise. In fact, after their conversation with Cosbie, the agents could only have been left with the impression that Cosbie knew little or nothing at all about where the motor home had come from or to whom it belonged. Given how little Cosbie knew, the agents could not have reasonably believed that Cosbie had authority to consent to a search of the vehicle.

*846 Although I do not agree with Part VII A of the majority opinion, nonetheless I would affirm the conviction in this case for the reasons set forth in Part VII B of the majority opinion.

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(Cite as: 844 F.2d 366)

H

United States Court of Appeals, Sixth Circuit.
UNITED STATES of America, Plaintiff-Appellee,
v.
Richard L. MARKHAM, Defendant-Appellant.
No. 87-3187.

Argued Oct. 16, 1987.
Decided April 18, 1988.

Defendant was convicted in the United States District Court for the Northern District of Ohio, David D. Dowd, Jr., J., of conspiracy to distribute marijuana and distribution of marijuana. Defendant appealed. The Court of Appeals, Higgins, District Judge, sitting by designation, held that warrantless search, supported by probable cause, of unattended motor home parked in private driveway did not violate Fourth Amendment.

Affirmed.

West Headnotes

Searches and Seizures 349 ⇐ 60.1

349 Searches and Seizures

349I In General

349k60 Motor Vehicles

349k60.1 k. In General. Most Cited Cases

(Formerly 349k60)

Warrantless search, supported by probable cause, of unattended motor home parked in private driveway did not violate Fourth Amendment; automobile exception to warrant requirement applied to motor home which bore out-of-state license plates and was situated such that objective observer would have concluded that it was being used as a vehicle and not as a residence. U.S.C.A. Const. Amend. 4.

*366 James R. Willis (argued), Cleveland, Ohio, for defendant-appellant.

Thomas Bauer, Asst. U.S. Attys., Akron, Ohio,
Gregory C. Sasse (argued), Asst. U.S. Atty.,
Cleveland, Ohio, for plaintiff-appellee.

Before WELLFORD and GUY, Circuit Judges, and
HIGGINS, District Judge. ^{FN*}

^{FN*} The Honorable Thomas A. Higgins,
Judge, United States District Court for the
Middle District of Tennessee, sitting by
designation.

HIGGINS, District Judge.

The appeal in this case arises from the warrantless early morning search of the appellant's Winnebago motor home and the subsequent seizure of several hundred pounds of marijuana.

I.

On March 17, 1986, the Federal Bureau of Investigation (FBI) received a tip from an informant concerning the illegal activities of the appellant, Mr. Richard Markham. The informant stated that Mr. Markham, a resident of Tennessee, was in Akron, Ohio, and that Mr. Markham's Winnebago motor home, Tennessee license number 11-H85M, was parked at a residence on Fairview Avenue in Barberton, Ohio. The informant also stated that Mr. Markham was expecting a large load of marijuana which would be brought into Akron by pickup truck and transferred to Mr. Markham's Winnebago for distribution. After receiving this information, an FBI agent drove by the residence at 853 Fairview Avenue in Barberton, Ohio, where he observed a Winnebago motor home parked in the driveway.

At about 1:00 a.m. on March 18, 1986, an FBI agent and a Summit County Sheriff's officer were parked at a vantage point *367 which provided them with an unobstructed view of the premises at

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853 Fairview Avenue. They observed a pickup truck enter the driveway at 853 Fairview Avenue and drive down to where the Winnebago and another pickup truck were parked. The lights in the Winnebago were turned on as the pickup truck approached it. The law enforcement agents then observed dark figures moving among the vehicles. Shortly thereafter, the pickup truck which had just entered the driveway left the premises. Large green garbage bags were lying on the bed of the pickup truck. The other pickup truck pulled out immediately behind the first truck. Three individuals were inside the second truck. One of those individuals was identified by one of the FBI agents as Richard Markham.

The agents then drove down the driveway at 853 Fairview Avenue and parked near the Winnebago. As they approached the Winnebago, they noted that the motor home's license number matched the number which they knew was registered to Richard Markham. They also noticed a strong odor of marijuana. The agents looked through the windshield of the motor home and observed numerous full large green garbage bags. No one was in or around the motor home, and the motor home was locked. An agent crawled through the window of the motor home and opened the door. The agents then conducted a warrantless search of the Winnebago. Several hundred pounds of marijuana contained in the large green trash bags were seized as a result of the search.

In a two-count indictment, the appellant was charged with (1) conspiracy to distribute marijuana and (2) distribution of marijuana, pursuant to the provisions of 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 846. Prior to trial, Mr. Markham filed a motion to suppress the hundreds of pounds of marijuana seized during the search of his motor home. On May 23, 1986, a hearing on the motion was held before the District Court of the Northern District of Ohio. The District Court, relying on *California v. Carney*, 471 U.S. 386, 105 S.Ct. 2066, 85 L.Ed.2d 406 (1985), held that a warrantless search of a mobile home does not violate the Fourth Amendment to the Constitution, as long as the mobile home is being used primarily for transportation purposes as opposed to residential

purposes, and denied the appellant's motion to suppress.

On December 30, 1986, after a bench trial, the appellant was convicted on both counts and was sentenced to two fifteen-year terms to be served concurrently and a special parole term of three years. Fines totalling \$250,000.00 and special assessments totalling \$100.00 were also imposed on the appellant.

II.

At oral argument, the appellant admitted that the agents had probable cause to believe that contraband was concealed in his motor home. He further conceded that he had no standing to challenge the agents' actions in entering the private driveway because he had no ownership interest in the residence at 853 Fairview Avenue. Therefore, on this appeal, the Court is only asked to determine whether, given probable cause, a warrantless search of an unattended motor home parked in a private driveway violates the Fourth Amendment of the Constitution.

The crux of the appellant's argument is that, absent exigent circumstances relating to the ready mobility of a vehicle, the automobile exception to the warrant requirement established in *Carroll v. United States*, 267 U.S. 132, 45 S.Ct. 280, 69 L.Ed. 543 (1925), which provides for warrantless searches of motor vehicles, is inapplicable.

The automobile exception has been addressed by the Supreme Court of the United States in the case of *California v. Carney*, 471 U.S. 386, 105 S.Ct. 2066, 85 L.Ed.2d 406 (1985). In *Carney*, a drug enforcement agent, who had uncorroborated information that Mr. Carney's motor home was being used to exchange marijuana for sex, watched Mr. Carney approach a youth who then accompanied Mr. Carney to his motor home, which was parked in a downtown San Diego parking lot. The agent and other agents then kept the motor home under surveillance. They stopped the #368 youth after he left the motor home, and he told them that he had received marijuana in return for

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permitting Mr. Carney sexual contacts. At the officers' request, the youth returned to the motor home and knocked on the door. Mr. Carney stepped out. The agents identified themselves as law enforcement officers. Then, without a warrant or consent, one agent entered the motor home and observed marijuana, plastic bags, and a scale of the kind used in weighing drugs. Mr. Carney was taken into custody, and the agents took possession of the motor home. A subsequent search of the motor home at the police station revealed more marijuana in the cupboards and refrigerator. Mr. Carney was charged with possession of marijuana for sale. The issue in *Carney* was whether the warrantless search of Mr. Carney's motor home was proper under the automobile exception to the warrant requirement of the Fourth Amendment.

The Supreme Court held that the automobile exception is based on two primary considerations—the ready mobility of motor vehicles and the reduced expectations of privacy in motor vehicles—which justify searches without prior recourse to the authority of a Magistrate as long as the overriding standard of probable cause is met. The Court further determined that those considerations are equally applicable to motor homes and that motor homes are to be treated as automobiles insofar as the automobile exception to the search warrant requirement is concerned.

The appellant concedes that, under the holding of *Carney*, his motor home is subject to the automobile exception to the warrant requirement. The appellant contends, however, that the automobile exception is inapplicable in this case because a warrant could have been obtained while the vehicle was unattended and under surveillance, and there were, therefore, no exigent circumstances relating to the mobility of the vehicle. The *Carney* case, however, makes it clear that the automobile exception is not based solely on the immediate mobility of a vehicle. As stated by the Supreme Court:

[A]lthough ready mobility alone was perhaps the original justification for the vehicle exception, our later cases have made clear that ready mobility is not the only basis for the exception. The reasons for the vehicle exception, we have said, are twofold.

[*South Dakota v. Opperman*], 428 U.S. [364], at 367 [96 S.Ct. 3092, 3096, 49 L.Ed.2d 1000 (1976)]. 'Besides the element of mobility, less rigorous warrant requirements govern because the expectation of privacy with respect to one's automobile is significantly less than that relating to one's home or office. *Ibid.*

California v. Carney, 471 U.S. at 391, 105 S.Ct. at 2069.

In fact, the Supreme Court noted that even in cases where an automobile is not immediately mobile, the lesser expectation of privacy resulting from its use as a readily mobile vehicle has justified the application of the exception. *Id.* The Supreme Court concluded that:

When a vehicle is being used on the highways, or if it is readily capable of such use and is found stationary in a place not regularly used for residential purposes—temporary or otherwise—the two justifications for the vehicle exception come into play.

Id. at 392-93, 105 S.Ct. at 2069-70. The Supreme Court found that Mr. Carney's vehicle was so situated that an objective observer would conclude that it was being used as a vehicle and not as a residence, and, accordingly, upheld the warrantless search of Mr. Carney's motor home on the basis of the automobile exception. Although this case presents a variation on *Carney* because the vehicle searched was parked in a private driveway, the Court finds that the *Carney* rationale is controlling.

In *Carney*, just as in this case, agents had the motor home under surveillance and could have obtained a search warrant for the vehicle. In addition, as Justice Stevens noted in his dissent, the motor home was parked in an off-the-street lot in downtown San Diego, only a few blocks from the Courthouse, where dozens of Magistrates were available to entertain a warrant application.*369 However, the majority opinion did not address this issue. Clearly, the *Carney* majority, perhaps in an attempt to avoid requiring law enforcement officers to make judgment calls about the security of every vehicle which they have probable cause to search, did not contemplate that an agent's inability to obtain a

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search warrant be a prerequisite to the application of the automobile exception. In fact, as discussed above, the *Carney* majority held that whenever a vehicle is readily capable of use on public roads, the automobile exception is applicable.

In this case, the motor home searched was on wheels and bore Tennessee license plates. In addition, although Mr. Markham resided in Tennessee, the vehicle was parked in a driveway connected to a public street in Barberton, Ohio. Moreover, there were no utility lines connected to the motor home. Clearly, Mr. Markham's motor home was so situated that an objective observer would conclude that it was being used as a vehicle and not as a residence. Therefore, in accordance with the holding in *Carney*, the underlying considerations justifying a warrantless search under the automobile exception came into play and the warrantless search of the appellant's motor home was proper pursuant to the automobile exception to the warrant requirement of the Fourth Amendment.

III.

The Court concludes that the search of appellant's motor home and subsequent seizure of marijuana were lawful. Accordingly, the order of the district court denying appellant's motion to suppress the evidence obtained in the search is affirmed.

C.A.6 (Ohio), 1988.
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P

United States Court of Appeals, Ninth Circuit.
UNITED STATES of America, Plaintiff-Appellee,
v.
Ralph HATLEY, Defendant-Appellant.
No. 92-30126.

Argued and Submitted Jan. 7, 1993.
Opinion July 8, 1993.
Opinion Withdrawn Feb. 1, 1994.
Decided Feb. 1, 1994.

Defendant was convicted before the United States District Court for the District of Oregon, Owen M. Panner, Chief Judge, of three counts of distribution of cocaine and one count of possession with intent to distribute cocaine, and he appealed. After withdrawal of prior opinion, 999 F.2d 392, the Court of Appeals, Trott, Circuit Judge, held that: (1) search of automobile that turned out to be inoperable did not violate defendant's Fourth Amendment rights, and (2) defendant was not entitled to two-level reduction under the Sentencing Guidelines for being a minor participant.

Affirmed.

West Headnotes

[1] Searches and Seizures 349 ⇨ 62

349 Searches and Seizures
349I In General
349k60 Motor Vehicles
349k62 k. Probable or Reasonable Cause.
Most Cited Cases
Law enforcement officers are entitled to search automobile without first obtaining a warrant in those cases where police have probable cause to believe that automobile contains evidence of crime. U.S.C.A. Const.Amend. 4.

[2] Searches and Seizures 349 ⇨ 60.1

349 Searches and Seizures

349I In General

349k60 Motor Vehicles

349k60.1 k. In General. Most Cited Cases
Vehicle exception to the warrant requirement is founded on two basic principles: automobiles are mobile and can be moved quickly outside jurisdiction of magistrate from whom warrant must be sought; expectation of privacy in one's vehicle is reduced by pervasive regulations governing vehicles capable of traveling upon public roads. U.S.C.A. Const.Amend. 4.

[3] Searches and Seizures 349 ⇨ 60.1

349 Searches and Seizures

349I In General

349k60 Motor Vehicles

349k60.1 k. In General. Most Cited Cases
Vehicle exception to the warrant requirement applied to car parked in defendant's driveway, notwithstanding that car was inoperable, where there was nothing apparent to officers to suggest that car was immobile; Fourth Amendment does not require officers to ascertain actual functional capacity of vehicle in order to satisfy exigency requirement; moreover, Fourth Amendment's reasonableness requirement was met because officers reasonably believed car was mobile. U.S.C.A. Const.Amend. 4.

[4] Sentencing and Punishment 350H ⇨ 764

350H Sentencing and Punishment

350HIV Sentencing Guidelines

350HIV(C) Adjustments

350HIV(C)3 Factors Decreasing Offense Level

350Hk764 k. Minor or Minimal Participation. Most Cited Cases
(Formerly 110k1251)
In determining for sentencing purposes whether defendant is a minimal or minor participant in any criminal activity, district court sentencing defendant

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after November 1, 1990 may consider all conduct within scope of guideline provision pertaining to relevant conduct, not just conduct cited in count of conviction. U.S.S.G. §§ 1B1.3, 3B1.2, 18 U.S.C.A.App.

[5] **Criminal Law 110** ⇨ **1158(1)**

110 Criminal Law
110XXIV Review
110XXIV(O) Questions of Fact and Findings
110k1158 In General
110k1158(1) k. In General. Most Cited

Cases

Determination whether defendant is a minor or minimal participant in a criminal offense under particular facts of the offense, for purposes of sentencing guideline, is reviewed for clear error. U.S.S.G. § 3B1.2, 18 U.S.C.A.App.

[6] **Sentencing and Punishment 350H** ⇨ **764**

350H Sentencing and Punishment
350HIV Sentencing Guidelines
350HIV(C) Adjustments
350HIV(C)3 Factors Decreasing Offense Level

350Hk764 k. Minor or Minimal Participation. Most Cited Cases
(Formerly 110k1251)

District court's conclusion that defendant was not a minor participant in cocaine distribution activity, and thus was not entitled to two-level reduction in sentence, was not clearly erroneous; search of defendant, his residence, and his car subsequent to his arrest resulted in seizure of over 700 grams of cocaine, a weapon, and currency which defendant admitted was proceeds from cocaine sales. U.S.S.G. § 3B1.2, 18 U.S.C.A.App.

*857 Des Connall and Wayne Mackeson, Portland, OR, for the defendant-appellant.

Fred N. Weinhouse, Assistant United States Attorney, Portland, OR, for the plaintiff-appellee.

Appeal from the United States District Court for the District of Oregon.

Before: D.W. NELSON, TROTT, and T.G. NELSON, Circuit Judges.

ORDER

The opinion filed in this case on July 8, 1993, 999 F.2d 392, is ordered withdrawn. In its place, the opinion that follows is ordered filed.

OPINION

TROTT, Circuit Judge:

Ralph G. Hatley appeals his conviction for three counts of distribution of cocaine and one count of possession with intent to distribute cocaine in violation of 21 U.S.C. § 841(a)(1) (1988). Hatley alleges on appeal that a search by police officers of an automobile that turned out to be inoperable violated his Fourth Amendment rights, and that the fruits of that search should therefore have been suppressed. Hatley also contends he was entitled to a two-level reduction under the Sentencing Guidelines for being a minor participant. United States Sentencing Commission, *Guidelines Manual*, § 3B1.2 (Nov.1991).

The district court heard pretrial motions on December 12, 1991 and denied appellant's motion to suppress evidence. Appellant waived his right to a jury trial and the case was tried to the court on stipulated facts. The district court found appellant guilty on all four counts and sentenced him to 51 months in prison based on a Guideline range of 51 to 63 months.

I

An informant purchased one-sixteenth ounce of cocaine from appellant on three separate occasions. Following the three "controlled buys," the informant arranged to purchase one-half pound of cocaine from the appellant for \$6,900.00. Appellant and the *858 informant agreed that the appellant would deliver the cocaine to the informant's house on September 11, 1991.

Law enforcement officers surveilled appellant's

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residence and observed appellant retrieve a box from one of his cars, a Honda. Appellant took this box into his residence. He then returned outside to retrieve a second box from another of his cars parked in the driveway, a Corvair.

Following a telephone call from the informant to the appellant finalizing the details of the purchase, the officers observed appellant leave the residence with the two boxes. He placed one box in the Corvair and the second box in the Honda. Appellant then drove the Honda away from the house.

The officers stopped appellant, took him back to his home, and advised him of his Miranda rights. After a discussion with Deputy Sheriff Susan Lambert in which she inappropriately threatened to take appellant's child into custody, appellant signed a consent form for police to search the two cars. Without a search warrant, law enforcement officers then seized eight ounces of cocaine from a closed container in appellant's Honda and 19 ounces of cocaine from a closed container in the Corvair. The Corvair was parked in the driveway of appellant's residence and according to appellant's testimony had been inoperable for four months. The officers were not aware that the Corvair was inoperable at the time they searched it.

In connection with a motion to suppress evidence seized from the automobiles, the district court held that because appellant believed his child would be taken into custody if he refused to consent to the search, the consent was not voluntary. The record fully supports this conclusion. Deputy Lambert's manifestly improper behavior rendered defective the signed consent form as a basis for the admissibility of anything found in the defendant's cars. The court correctly held, however, that probable cause existed to search the cars independent of Deputy Lambert's misconduct, and the disputed evidence was admitted for all purposes. See *United States v. Parr*, 843 F.2d 1228, 1232 (9th Cir.1988) ("police who have legitimately stopped an automobile and who have probable cause to believe that contraband is concealed within the car may make a probing search of compartments and containers."); see also *California v. Carney*, 471 U.S. 386, 390, 105 S.Ct. 2066, 2068, 85

L.Ed.2d 406 (1985) (vehicles subject to different treatment than fixed buildings); *Murray v. United States*, 487 U.S. 533, 537, 108 S.Ct. 2529, 2533, 101 L.Ed.2d 472 (1988) (" '[T]he interest of society in deterring unlawful police conduct and the public interest in having juries receive all probative evidence of a crime are properly balanced by putting the police in the same, not a worse, position that they would have been in if no police error or misconduct had occurred....' " (quoting *Nix v. Williams*, 467 U.S. 431, 443, 104 S.Ct. 2501, 2508, 81 L.Ed.2d 377 (1984))).

II

Appellant contends the district court erred in refusing to suppress the cocaine seized from the Corvair. He argues that the vehicle exception does not apply because the Corvair was inoperable and on his property at the time of the search. The issue of the lawfulness of an automobile search is a mixed question of fact and law which is reviewed de novo. *United States v. Vasey*, 834 F.2d 782, 785 (9th Cir.1987).

[1] [2] Law enforcement officers are entitled to search an automobile without first obtaining a warrant in those cases where the police "have probable cause to believe that an automobile contains evidence of a crime ..." *United States v. Alvarez*, 899 F.2d 833, 839 (9th Cir.1990), cert. denied, 498 U.S. 1024, 111 S.Ct. 671, 112 L.Ed.2d 663 (1991). This "vehicle exception" to the warrant requirement is founded on two basic principles. First, automobiles are mobile and "can be moved quickly outside the jurisdiction of the magistrate from whom the warrant must be sought." *United States v. Hamilton*, 792 F.2d 837, 842 (9th Cir.1986). Second, "the expectation of privacy in one's vehicle is reduced by the pervasive regulations governing vehicles capable of traveling upon public roads." *Id.*

[3] Though we have never addressed the precise issue of whether the vehicle exception *859 applies to an inoperable vehicle, we have explicitly held that the vehicle exception applies to a search of a vehicle parked on a private driveway. *Hamilton*,

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792 F.2d at 843. In *Hamilton*, police searched a motor home that was parked in a residential driveway. The motor home was attached to the home's electric utilities by an extension cord. *Id.* at 843. The *Hamilton* court suggested several factors which bear on whether or not a vehicle comes within the automobile exception for Fourth Amendment purposes: "its location, whether the vehicle is readily mobile or instead, for instance, elevated on blocks, whether the vehicle is licensed, whether it is connected to utilities, and whether it has convenient access to a public road." *Id.* (quoting *California v. Carney*, 471 U.S. at 394 n. 3, 105 S.Ct. at 2071 n. 3 (1985)).

With the exception of "whether the vehicle is readily mobile," the factors set forth in *Carney* and *Hamilton* indicate that the vehicle exception to the warrant requirement applies to the Corvair. The car was not connected to utilities, and "[b]ecause it was located in a residential driveway, it had easy access to a public road." *Id.*

Though the Corvair was not *actually* mobile, it was *apparently* mobile. There was nothing apparent to the officers to suggest the car was immobile. It was not up on blocks, and there is no information in the record to indicate the tires were flat or that wheels of the car were missing. In matters of search and seizure, we apply an objective test of reasonableness: would the facts available to the officer at the moment warrant a person of reasonable caution to believe that the car was operable? *Illinois v. Rodriguez*, 497 U.S. 177, 188, 110 S.Ct. 2793, 2801, 111 L.Ed.2d 148 (1990). As the Supreme Court held in *Rodriguez*:

[t]o satisfy the 'reasonableness' requirement of the Fourth Amendment, what is generally demanded of the many factual determinations that must regularly be made by agents of the government—whether the magistrate issuing the warrant, or the police officer executing a warrant, or the police officer conducting a search or seizure under one of the exceptions to the warrant requirement—is not that they always be correct, but that they always be reasonable.

497 U.S. at 185, 110 S.Ct. at 2799 (emphasis added).

It would be unduly burdensome to require the police to establish that every car that appeared to be mobile was indeed mobile before making the search. We therefore hold, as the Eighth Circuit has, that the Fourth Amendment does not require that officers ascertain the actual functional capacity of a vehicle in order to satisfy the exigency requirement. *United States v. Hepperle*, 810 F.2d 836, 840 (8th Cir.) *cert. denied*, 483 U.S. 1025, 107 S.Ct. 3274, 97 L.Ed.2d 772 (1987). In this case, the Fourth Amendment's reasonableness requirement was met because the officers reasonably believed the car was mobile.

III

Appellant argues the district court erred in refusing to consider him a minor participant for purposes of sentencing. The Sentencing Guidelines permit a two-level reduction if the court finds the defendant was a minor participant in the offense. U.S.S.G. § 3B1.2. A minor participant is any participant who is less culpable than most other participants, but whose role could not be described as minimal. Section 3B1.2 provides:

Based on the defendant's role in the offense, decrease the offense level as follows:

- (a) If the defendant was a minimal participant in any criminal activity, decrease by 4 levels.
- (b) If the defendant was a minor participant in any criminal activity, decrease by 2 levels. In cases falling between (a) and (b), decrease by 3 levels.

U.S.S.G. § 3B1.2.

[4] [5] In determining whether a defendant was a minimal or a minor participant in any criminal activity, a district court sentencing a defendant after November 1, 1990 shall consider all conduct within the scope of § 1B1.3 (Relevant Conduct), not just conduct cited in the count of conviction. *United States v. Webster*, 996 F.2d 209 (9th Cir.1993). The issue of whether a defendant is a minor or minimal participant in a criminal *860 offense under the particular facts of the offense is reviewed for clear error. *United States v. Zweber*, 913 F.2d 705, 708 (9th Cir.1990). The district court's legal interpretation of the Guidelines is reviewed *de*

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END OF DOCUMENT

C.A.9 (Or.), 1994.
U.S. v. Hatley
15 F.3d 856

ORIGINAL

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PUBLIC DEFENDER
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COEUR D'ALENE, IDAHO 83816-9000
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STATE OF IDAHO } SS
COUNTY OF KOOTENAI }
FILED: 1-13-06
AT 0 O'CLOCK M
CLERK, DISTRICT COURT
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)	
)	
Plaintiff,	)	CASE NUMBER CR-05-0000403
)	
V.	)	BRIEF IN SUPPORT OF MOTION TO
	)	SUPPRESS
KIRK J. GOSCH,)	
)	
Defendant.)	
)	

COMES NOW, the above named defendant, by and through his attorney, Anne C. Taylor, Deputy Public Defender, and hereby submits the following brief in support of his motion to suppress.

FACTS:

Idaho State Police Investigations obtained a search warrant for a residence located at 11974 N. Rimrock Road, and a Black Jeep Cherokee. Idaho State Police detective Terry Morgan testified before Judge Swanstrom that the probable cause for the warrant was based on two separate trash pulls, information relating to the defendant's father and information dating back as far as 2 years. Surveillance was set up near the residence while multiple officers got in place

BRIEF IN SUPPORT OF MOTION TO SUPPRESS

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to execute the warrant. During surveillance officers observed Kirk Gosch (defendant), Brandon Capello, and Kyle McCormick in and around the residence. Officers observed the three men moving items from the residence and loading them into vehicles. Particularly, items were loaded in to the black Jeep Cherokee, the passenger compartment of a white sedan and the bed of a white truck. It was later determined that McCormick was there to clean carpets. Officers observed Capello leave the area in the Jeep. He was later stopped, and arrested, charges then dismissed. Upon entry into the residence Gosch was arrested and McCormick allowed to leave. The warrant was executed on the residence and the Jeep. Some items of contraband were seized in the residence. The officers, then, without a warrant searched the white sedan, and the white truck. Items of contraband were seized from the trunk of the white sedan. Mr. Gosch was charged with the items of contraband from the trunk of the white sedan, as well as from the residence.

ISSUES AND ARGUMENT:

I.

THE SEARCH WARRANT WAS BASED ON STALE INFORMATION, AND WAS OVERBROAD. ITEMS SEIZED FROM THE RESIDENCE SHOULD BE SUPPRESSED

The defendant moves the court for suppression of the evidence against him. The first area of focus is suppression of the evidence obtained from the residence. The defendant's position is that the warrant was defective because much of the probable cause was stale information. The warrant allowed a seizure of many items that would relate only to the stale or vague information. Other portions of the probable cause for the search warrant related to the father of the defendant and not to the defendant. Due to the staleness of the information much of the description of the items to be seized was overbroad. The warrant permitted

seizure of items that would only be supported by the stale information, and nothing current.

Therefore the defendant requests the evidence obtained from the residence be suppressed.

“The staleness of information regarding the presence of items in a certain place depends upon the nature of the factual scenario involved. *State v. Turnbeaugh*, 110 Idaho 11, 13, 713 P.2d 447, 449 (Ct.App.1985). In a determination of whether information contained within a search warrant affidavit is stale, there exists no magical number of days within which information is fresh and after which the information becomes stale. The question must be resolved in light of the circumstances of each case. *State v. Gomez*, 101 Idaho 802, 808, 623 P.2d 110, 116 (1980). An important factor in a staleness analysis is the nature of the criminal conduct. If the affidavit recounts criminal activities of a protracted or continuous nature, a time delay in the sequence of events is of less significance. *Id.* Certain nefarious activities, such as narcotics trafficking, are continuing in nature and, as a result, are less likely to become stale even over an extended period of time. *See Turnbeaugh*, 110 Idaho at 14, 713 P.2d at 450. *Carlson*, 134 Idaho at 477, 4 P.3d at 1129.” *Woodward v. State* 142 Idaho 98 (Id.App 2005).

II.

THE SEARCH OF THE VEHICLE WAS AN UNLAWFUL EXTENSION OF THE SEARCH WARRANT, WAS WITHOUT A WARRANT, AND DID NOT MEET AN EXCEPTION TO THE WARRANT REQUIREMENT.

The defendant requests the court suppress the evidence obtained from the trunk of the white sedan. The defendant argues that the evidence from the vehicle be should be suppressed because the vehicle was not the subject of the search warrant issued, nor was it authorized by any search warrant. The Black Jeep Cherokee was the only vehicle that was subject to the warrant issued by the magistrate. The officers searched the white sedan and seized contraband. The search was warrantless and thus, unreasonable.

Several officers were present executing the warrant. One officer was Deputy Shaw who is a K-9 handler. During the time he was present he deployed his dog on the other vehicles parked near the residence. The dog alerted on the white sedan, and the white truck. Based on the alert the officers got inside both vehicles. The officers found nothing in the truck. In the trunk of the white sedan the officers found contraband.

There was no warrant for the search of the sedan. Searching the sedan was an unlawful extension of the search warrant. "... when a search exceeds the scope permitted by a valid (or partially valid) search warrant, the entire search ordinarily is not rendered invalid. Rather, only the property unlawfully seized will be suppressed." *State v. Bussard* 114 Idaho 781, 787. (Ct. App 1988) (See also *State v. Holman* 109 Idaho 382 (Ct.App 1985). In the instant case there was no warrant for the white sedan. Using the drug dog to justify the search of the vehicle is an unlawful extension of the search warrant, and the evidence should be suppressed.

The defendant argues that the warrantless search of the white sedan does not meet one of the exceptions to the warrant requirement. The general rule is that an officer may search an automobile without a warrant if the officer has probable cause to believe the vehicle contains contraband and the automobile is readily movable. See *Wyoming v. Houghton* 526 U.S. 295(1999); *State v. Braendle* 134 Idaho 173 (2000).

The defendant asserts that neither part of the rule authorizing a warrantless search is met. First, the probable cause to believe the trunk of the white sedan contains contraband is based solely on Deputy Shaw's K-9 alert. Generally, during a routine traffic stop, so long as the stop is not lengthened, a *properly trained* K-9 alert supplies probable cause for entry into the vehicle.

(See *State v. Guiterrez* 137 Idaho 647 (Ct.App2002).) This case does not involve a traffic stop but an extension of a search warrant. In this case the defendant urges the court to look at the reliability of the dog and determine Deputy Shaw had something short of probable cause to enter the trunk of the white sedan.

Deputy Shaw's K-9 alerted on the white truck at this same location. The officers then searched it (also without a warrant) and found no contraband. The white truck was searched prior to the white sedan, and Deputy Shaw knew the dog had indicated and no substance had been found just minutes before opening the trunk of the white sedan.

Deputy Shaw has often used the K-9 during stops, the dog alerts and no contraband is found. In fact Deputy Shaw has on at least one occasion disclosed to another officer that the dog often "hits" and there is no controlled substance found; that the dog will alert due to the **odor** of the substance that could remain in a vehicle for some time. The odor could come from someone who has used, and touched the vehicle without washing his or her hands. (Defendant urges the court to read the dissent written by Justice Suiter in *Illinois v. Caballes* 543 U.S. 405(2005)). In the case at bar, Deputy Shaw may have had some suspicion that the odor of contraband was on or in the trunk of the white sedan, but not probable cause that contraband was in the vehicle. The K-9's indication does not rise to the level of probable cause required to satisfy the first part of the exception to the warrant requirement.

The second portion of the exception requires a finding of mobility that creates an exigent circumstance. In this situation there was no exigency, the car was not moving; it was not about to be moved. When the warrant for the residence was served and while it was being carried out

numerous officers were present. The state's witness list contains the names of 7 officers. If the officers wanted to get into the vehicle they could easily have posted an officer near the car while another sought a search warrant. The officers outnumbered suspects, one suspect was away from the scene in the Jeep, and had been taken into custody; one person was known to have arrived in the carpet cleaning van and allowed to leave, and the remaining person was in custody. A warrant could easily have been sought.

CONCLUSION

The case before the court requires suppression of the evidence. The items retrieved from the residence should be suppressed based on the stale information being provided as probable cause for the issuance of the warrant. The warrant was, as a result, overbroad. The items from the white sedan must be suppressed due to the unlawful extension of the search warrant. The items must be suppressed because the search of the white sedan does not fall within the automobile exception.

Respectfully submitted.

DATED this 13 day of January, 2001.

OFFICE OF THE KOOTENAI
COUNTY PUBLIC DEFENDER

BY:



ANNE C. TAYLOR
DEPUTY PUBLIC DEFENDER

Session: Hosack011306A

Division: DIST

Courtroom: Courtroom9

Session Date: 2006/01/13

Session Time: 08:06

Judge: Hosack, Charles

Reporter: *Jamie Johnson mrm*

Clerk(s):

Douglas, Barbara

State Attorney(s):

Public Defender(s):

Prob. Officer(s):

Court interpreter(s):

Barbara Douglas

Case ID: 0001

Case number: CR2005-403

Plaintiff:

Plaintiff Attorney:

Defendant: Gosch, Kirk J

Co-Defendant(s):

Pers. Attorney:

State Attorney:

Public Defender:

2006/01/13

10:01:56 - Operator

Recording:

10:01:56 - New case

Gosch, Kirk J

10:02:18 - Judge: Hosack, Charles

HERE ON MOTION TO SUPPRESS.

10:02:26 - Add Ins: Verharen, Art

READY TO PUT ON EVIDENCE

10:02:31 - Add Ins: Taylor, Anne

READY TO PUT ON EVIDENCE AS WELL

10:02:40 - Add Ins: Taylor, Anne

Ask that witnesses be excluded during testimony

10:02:48 - Add Ins: Verharen, Art

no objection

10:02:51 - Add Ins: Verharen, Art

CALLS W1 TERRY MORGAN

10:03:01 - Other: CLERK

SWEARS W1

10:03:33 - Other: W1, TERRY MORGAN PA DX
Detective with ISP. Describes work experience duties.

10:04:31 - Add Ins: MORGAN, W1 TERRY *June 2005*
Obtained SW from Judge Swantsrom- Rimrock Drive - 11974 Rimrock Road in

10:04:50 - Add Ins: MORGAN, W1 TERRY
Hayden sounds right. SW for residence and black jeep. Like mother-in-law

10:05:34 - Add Ins: MORGAN, W1 TERRY
apartment - describes studio apartment over garage. EX 1 - diagram of

10:06:00 - Add Ins: MORGAN, W1 TERRY
area/residence.

10:06:17 - Add Ins: Verharen, Art
OFFER EX 1

10:06:20 - Add Ins: Taylor, Anne
no objection

10:06:23 - Judge: Hosack, Charles
ADMIT EX 1

10:07:07 - Add Ins: Schwartz, Chris

10:07:11 - Add Ins: MORGAN, W1 TERRY
There was a van parked in driveway and 2 vehicles - 1 white pickup truck and

10:07:35 - Add Ins: MORGAN, W1 TERRY
white suzuki car. Went to property before I got SW. There was a black jeep

10:07:57 - Add Ins: MORGAN, W1 TERRY
there. SW was for residence and black jeep. When we returned with SW, black

10:08:10 - Add Ins: MORGAN, W1 TERRY
jeep not there. 12:55 obtained SW. Returned about 1:30-1:35 to execute SW.

10:08:31 - Add Ins: MORGAN, W1 TERRY
Before we got SW, white suzuki car was present at residence. White suzuki

10:08:59 - Add Ins: MORGAN, W1 TERRY
was registered to an unknown female - didn't know if it was involved with

10:09:08 - Add Ins: MORGAN, W1 TERRY
apt. or house. SW basis was because def lived at house and owned jeep. If we

10:09:49 - Add Ins: MORGAN, W1 TERRY
would have known suzuki vehicle was owned by def, we would have gotten SW for

10:10:01 - Add Ins: MORGAN, W1 TERRY
that car as well.

10:10:51 - Add Ins: Taylor, Anne
CX W1

10:10:57 - Add Ins: MORGAN, W1 TERRY
Obtained SW on January 6. I recall PC/testimony before Judge Swanstrom. We

10:11:28 - Add Ins: MORGAN, W1 TERRY
made 2 trash pulls - 1 on 1/6/05 and one previous. On 1/6/05, trash cans

10:12:00 - Add Ins: MORGAN, W1 TERRY
located (near driveway area). The first time we went thru trash at police station.

10:12:28 - Add Ins: MORGAN, W1 TERRY
Had conversation with older gentleman re trash - owner

10:13:01 - Add Ins: MORGAN, W1 TERRY
suspected def to be drug trafficking - he spoke with Jason Feltman. Jason is

10:13:17 - Add Ins: MORGAN, W1 TERRY
uniformed officer - he contacted us. We met at pre-arranged date and time -

10:13:35 - Add Ins: MORGAN, W1 TERRY
Jason passed on me and said owner hauls trash for def - he'd bring it to

10:13:48 - Add Ins: MORGAN, W1 TERRY
police dept. I rec'd call from owner - we met at owner's residence/spoke

10:14:57 - Add Ins: MORGAN, W1 TERRY
with owner and wife. Owner had concerns about his own well being. He also

10:15:13 - Add Ins: MORGAN, W1 TERRY
said def was in process of moving out apt that morning. (1/6/05). Owner

10:15:41 - Add Ins: MORGAN, W1 TERRY
picked up trash - drove to HL Police Dept with trash.

10:15:56 - Add Ins: MORGAN, W1 TERRY
1st time we went thru trash - we found drug paraphernalia - but becuz chain

10:16:20 - Add Ins: MORGAN, W1 TERRY
of evidence issue, not enough for me to get SW.

10:16:41 - Add Ins: Verharen, Art
objection - counsel testifying

10:16:45 - Judge: Hosack, Charles
witness can deal with hypothetical question

10:16:52 - Add Ins: MORGAN, W1 TERRY
there were items in trash - we didn't look at evidence as thorough as -

10:17:07 - Add Ins: MORGAN, W1 TERRY
reasonable suspicion. We didn't use it as evidence. It wasn't seized or

10:17:23 - Add Ins: MORGAN, W1 TERRY
documented. On 1/6/05 - on property with owner - can see vehicles in

10:17:42 - Add Ins: MORGAN, W1 TERRY
driveway. Saw white sedan, white GMC pickup, black jeep. Never saw carpet

10:17:57 - Add Ins: MORGAN, W1 TERRY
cleaning van. I ran plates on the white car - jotted down on my hand. Knew

10:18:15 - Add Ins: MORGAN, W1 TERRY
from previous experience with K. Gosch that jeep was his. I was familiar

10:18:28 - Add Ins: MORGAN, W1 TERRY
with Kevin Gosch/new GMC belonged to him. In PC, spoke re prior incidents.

10:19:06 - Add Ins: MORGAN, W1 TERRY
GMC was registered to Kevin Gosch. GMC wasn't in Kirk's name. Kevin Gosch

10:19:27 - Add Ins: MORGAN, W1 TERRY
was part of PC for SW on Kirk Gosch's residence.

10:19:44 - Add Ins: MORGAN, W1 TERRY
I could have testified re Kirk Gosch's criminal history. In trash pull on

10:20:21 - Add Ins: MORGAN, W1 TERRY
1/6/05 - found baggies containing residue of marij - there was at least 2

10:20:34 - Add Ins: MORGAN, W1 TERRY
baggies/markings - common for marking and graded. 2 one gallon baggies had

10:21:04 - Add Ins: MORGAN, W1 TERRY
markings on them. Also, small plastic baggies with residue/green leafy

10:21:17 - Add Ins: MORGAN, W1 TERRY
substance. Discusses different grades of BC Bud. Based on experience, BC

10:21:58 - Add Ins: MORGAN, W1 TERRY
Bud seems to be popular marij of choice in this area.

10:22:11 - Add Ins: Verharen, Art
objection - relevance

10:22:15 - Judge: Hosack, Charles
overrule

10:22:18 - Add Ins: MORGAN, W1 TERRY

BC Bud seems to be cream of crop - they get more money for BC Bud. We find
10:22:59 - Add Ins: MORGAN, W1 TERRY
more users in this area use BC Bud rather than home grown. Trash pull about
10:23:19 - Add Ins: MORGAN, W1 TERRY
10-10:30 am. I Recall Special Agent Clemson and Paul Berger and I think
10:23:37 - Add Ins: MORGAN, W1 TERRY
Clark Rollins was with me. A detective was doing surveillance on home when
10:24:02 - Add Ins: MORGAN, W1 TERRY
we were doing trash pull. There was communication between officers. When we
10:25:11 - Add Ins: MORGAN, W1 TERRY
at some point in time, learned black jeep was leaving residence. Someone
10:25:25 - Add Ins: MORGAN, W1 TERRY
instructed that jeep be stopped - I probably called from courthouse and said
10:25:51 - Add Ins: MORGAN, W1 TERRY
w had SW. I knew black jeep left house and that it was stopped. It was
10:26:06 - Add Ins: MORGAN, W1 TERRY
stoppd off Lancaster in housing addition. Driver was Brandon Capella - he
10:26:29 - Add Ins: MORGAN, W1 TERRY
was arrested/taken into custody. Jeep was transported back to residence at
10:26:40 - Add Ins: MORGAN, W1 TERRY
some point in time. When I returned with SW noticed carpet cleaning van.
10:27:14 - Add Ins: MORGAN, W1 TERRY
6-7 officers were present. Vick Carloff, Paul berger, Clark Rollins Eric
10:27:28 - Add Ins: MORGAN, W1 TERRY
Clemons, Jay Forest, I, Beth Bradbury, Julie Morgan. This was not entirely
10:27:57 - Add Ins: MORGAN, W1 TERRY
my investigation. Not one particular person was running the show. Paul
10:28:14 - Add Ins: MORGAN, W1 TERRY
Berger was evidence custodian/took charge of scene. My role - oversee
10:28:32 - Add Ins: MORGAN, W1 TERRY
everything. If there was interviews to do, I would assign myself. I obtain
10:28:54 - Add Ins: MORGAN, W1 TERRY
SW and return warrants. Don't recall when I returned the SW issued on
10:29:07 - Add Ins: MORGAN, W1 TERRY
1/6/05.
10:29:15 - Add Ins: MORGAN, W1 TERRY
At time of execution of SW, made entry into residence. Kyle McCormack was
10:29:43 - Add Ins: MORGAN, W1 TERRY
present-carpet cleaner. He was allowed to leave. Def was cuffed and placed
10:29:57 - Add Ins: MORGAN, W1 TERRY
under arrest
10:30:01 - Add Ins: Verharen, Art
objection relevance
10:30:08 - Add Ins: Taylor, Anne
There are statements - unclear as to how and when they were made. Reports
10:30:19 - Add Ins: Taylor, Anne
are unclear
10:30:21 - Judge: Hosack, Charles
override
10:30:24 - Add Ins: Verharen, Art
Def's mot/suppres doesn't touch on any miranda violations nor does brief -

10:30:38 - Add Ins: Verharen, Art
irrelevant

10:30:41 - Add Ins: Taylor, Anne
Report says miranda was given - want to determine what rights were given and

10:30:57 - Add Ins: Taylor, Anne
what statements were made.

10:31:05 - Judge: Hosack, Charles
You are aware of statements made by def - you wish to raise miranda issue

10:31:16 - Add Ins: Taylor, Anne
don't know - def left in house - during executing of SW - def said things - I

10:31:31 - Add Ins: Taylor, Anne
don't know what was said - I know he was running his mouth. Because it is

10:31:44 - Add Ins: Taylor, Anne
not in report, want to know before trial what strmts wer emade

10:31:53 - Add Ins: Verharen, Art
MOt/suppress is not fishing expedition. They had police reports for over a

10:32:04 - Add Ins: Verharen, Art
year - suff time to amend Mot/Suppres to allege miranda violation - never

10:32:22 - Add Ins: Verharen, Art
been addressed - 1st time I've heard of it. Court's pretrial ruling mandates

10:32:32 - Add Ins: Verharen, Art
a brief - at least some kind of notice should be given. Counsel can't tell

10:32:44 - Add Ins: Verharen, Art
court whether there is or is not a miranda issue. Not relevant at this

10:32:54 - Add Ins: Verharen, Art
stage.

10:33:03 - Judge: Hosack, Charles
Don't know what statements referred to - sustain objection. Mots/Suppress

10:33:20 - Judge: Hosack, Charles
aren't pretrial of jury trial.

10:33:36 - Add Ins: MORGAN, W1 TERRY
I didn't call for Deputy Shaw. I had some communication with Deputy

10:34:07 - Add Ins: MORGAN, W1 TERRY
Shaw-don't know when. I wasn't involved in what Shaw was doing with his dog.

10:34:36 - Add Ins: MORGAN, W1 TERRY
Det Berger called Shaw. Det. Berger not present when I got SW - he was

10:34:50 - Add Ins: MORGAN, W1 TERRY
doing surveillance. At time I obtained SW, Eric Clemenson was present with

10:35:04 - Add Ins: MORGAN, W1 TERRY
me. 2nd search warrant obtained for storage world. Executed

10:35:21 - Add Ins: Verharen, Art
Relevance - obj - not raised in brief

10:35:32 - Judge: Hosack, Charles
Don't know if there was even evidence in there - relevance?

10:35:42 - Add Ins: Taylor, Anne
withdraw.

10:35:46 - Add Ins: MORGAN, W1 TERRY
Didn't find controlled substance in storage unit.

10:35:59 - Add Ins: Verharen, Art
obj relevance

10:36:02 - Judge: Hosack, Charles

sustain

10:36:04 - Add Ins: Taylor, Anne
That might be relevant - if we are looking at other people might being

10:36:31 - Add Ins: Taylor, Anne
involved other than my client, it is important

10:36:37 - Judge: Hosack, Charles
validity of SW at def's residence/drug dog search. 2nd SW at diff location

10:36:51 - Judge: Hosack, Charles
is irrelevant to show what?

10:36:56 - Add Ins: Taylor, Anne
whose items were in residence and that m client's personal property - most-

10:37:07 - Add Ins: Taylor, Anne
was out of residence. Question goes to where def's personal property is

10:37:22 - Add Ins: Taylor, Anne
located

10:37:24 - Judge: Hosack, Charles
sustain obj

10:37:38 - Add Ins: MORGAN, W1 TERRY
Owner said trash was his. We found nothing in trash to indicate it was

10:38:34 - Add Ins: MORGAN, W1 TERRY
someone else's other than def's trash. No other items indicated it was

10:38:47 - Add Ins: MORGAN, W1 TERRY
someone else's trash. Owner says he picks up trash and puts it there.

10:39:15 - Add Ins: Verharen, Art
RDX W1

10:39:19 - Add Ins: MORGAN, W1 TERRY
there was understanding re trash - def places trash in driveway and owner

10:39:43 - Add Ins: MORGAN, W1 TERRY
takes it to the dump. Trash was located in driveway area. Owner said it was

10:40:20 - Add Ins: MORGAN, W1 TERRY
owner's job to remove the trash pursuant to an understanding. Owner would

10:41:01 - Add Ins: MORGAN, W1 TERRY
take trash to the dump. It was never understood that trash be placed further

10:41:13 - Add Ins: MORGAN, W1 TERRY
out by the road.

10:41:54 - Judge: Hosack, Charles
Step down.

10:41:58 - Add Ins: Verharen, Art
CALLS W1 - Vick Carlock

10:42:13 - Other: clerk
swears W2

10:42:36 - Other: CARLOCK, W2 - VICKI
Det Sgt with ISP in CDA.

10:43:08 - Add Ins: CARLOCK, W2 - VICKI *June 6 2005*
Conducted surveillance at residence - in main residence in bedroom I took up

10:43:28 - Add Ins: CARLOCK, W2 - VICKI
surveillance. Date of surveillance was

10:43:45 - Add Ins: CARLOCK, W2 - VICKI
I arrived probably 11:15 am. Observed van arrive couple minutes after noon.

10:44:04 - Add Ins: CARLOCK, W2 - VICKI
Cargo van - driver was Kyle McCormack. I left area around 1:30 pm.

10:44:32 - Add Ins: CARLOCK, W2 - VICKI
At 12:06 pm - a person (brian capello) went to area of vehicles/by where
10:44:57 - Add Ins: CARLOCK, W2 - VICKI
cargo van and white pickup was parked. Couldn't see what he was doing. He
10:45:06 - Add Ins: CARLOCK, W2 - VICKI
reappeared into site - carrying rectangular piece of white plastic - he went
10:45:26 - Add Ins: CARLOCK, W2 - VICKI
into residence. At 12:32 pm - (reviews report); observed Capello leave
10:45:54 - Add Ins: CARLOCK, W2 - VICKI
residence, went to black cherokee - opened hatchback and then closed it and
10:46:06 - Add Ins: CARLOCK, W2 - VICKI
returned to front porch, smokes and went inside. 12:36 pm Capello went out
10:46:19 - Add Ins: CARLOCK, W2 - VICKI
of residence, carried duffle bag, went to cherokee and put backpack in. He
10:46:31 - Add Ins: CARLOCK, W2 - VICKI
was followed b McCormack - he was carrying duffle/backpack item and placed it
10:46:44 - Add Ins: CARLOCK, W2 - VICKI
in. Kirk Gosch carrying 2 black garbage sacks and went to cargo area of
10:46:57 - Add Ins: CARLOCK, W2 - VICKI
jeep. 12:38 pm - Capello came out with itmes/placed in jeep; 12:40 - gosh
10:47:12 - Add Ins: CARLOCK, W2 - VICKI
placed duffel bag in jeep. Saw all 3 people place items in jeep. At
10:47:47 - Add Ins: CARLOCK, W2 - VICKI
approx/items carried out by individuals - to area between white vehicle and
10:47:58 - Add Ins: CARLOCK, W2 - VICKI
jeep - couldn't tell what vehicle it was placed in. On one occasion, before
10:48:20 - Add Ins: CARLOCK, W2 - VICKI
12:45 pm - def placed bedding/clothing into white vehicle-suzuki. Black jeep
10:48:41 - Add Ins: CARLOCK, W2 - VICKI
driven off about 12:45 pm. Jeep was stopped and returned to residence later.
10:48:54 - Add Ins: CARLOCK, W2 - VICKI
Saw white pickup truck being loaded. Mr. McCormack moved cargo van out of
10:49:12 - Add Ins: CARLOCK, W2 - VICKI
area. Def took white pickup and moved it into van's spot - began loading
10:49:34 - Add Ins: CARLOCK, W2 - VICKI
items/larger. It appeared people were moving out.
10:50:06 - Add Ins: Taylor, Anne
CX W2
10:50:14 - Add Ins: CARLOCK, W2 - VICKI
During surveillance - I was taking notes, on phone. Lady who lived there was
10:50:38 - Add Ins: CARLOCK, W2 - VICKI
in-out of room. No one else there. I was talking on phone - mostly talking
10:50:56 - Add Ins: CARLOCK, W2 - VICKI
to surveillance team. Also spoke with Paul Berger. Several conversations.
10:51:42 - Add Ins: CARLOCK, W2 - VICKI
Becuz of angle of my view, when they would go between 2 vehicles, I didn't
10:52:01 - Add Ins: CARLOCK, W2 - VICKI
know what vehicle was being loaded into. If I saw something very specific, I
10:52:20 - Add Ins: CARLOCK, W2 - VICKI
noted it. All of those peoples were in between and around the vehicles.
10:53:24 - Add Ins: CARLOCK, W2 - VICKI

(paragraph 19 of report) White kitchen bag referred to - same type of bag

10:53:40 - Add Ins: CARLOCK, W2 - VICKI
Capello carried. I left around 1:30 pm. I never assisted in execution of SW

10:53:55 - Add Ins: CARLOCK, W2 - VICKI
or conversation with Deputy Shaw on date of incident. Det Morgan was not in

10:54:27 - Add Ins: CARLOCK, W2 - VICKI
my chain of contact that date.

10:54:35 - Add Ins: Verharen, Art
REDX W2

10:54:41 - Add Ins: CARLOCK, W2 - VICKI
No specific recollection telling Morgan white car was being loaded.

10:54:58 - Judge: Hosack, Charles
Excuses W2

10:55:10 - Add Ins: Verharen, Art
Calls W3 - Keith Hutcheson

10:55:20 - Other: clerk
swears W3

10:56:06 - Add Ins: HUTCHESON, W3 KEITH
Chief of Police for CDA Tribe. Describes employment history.

10:56:40 - Add Ins: HUTCHESON, W3 KEITH
September 1999 started with K-9 unit up until Sept. 2005.

10:56:56 - Add Ins: HUTCHESON, W3 KEITH
Describes training/certification with K-9s. Learn how to read dog/change of

10:59:12 - Add Ins: HUTCHESON, W3 KEITH
behavior. Discussions re dog/handling/training

10:59:57 - Add Ins: HUTCHESON, W3 KEITH
for narcotics. Dog will get close to the source and alert - change of behavior

11:03:30 - Add Ins: HUTCHESON, W3 KEITH
or sit. Discusses K-9 certifications/qualifications in Idaho.

11:04:39 - Add Ins: HUTCHESON, W3 KEITH
I worked with Baron for 6 yrs. I have a master certification in State of WA.

11:07:06 - Add Ins: HUTCHESON, W3 KEITH
Testified numerous times re searches with Baron.

11:07:38 - Add Ins: HUTCHESON, W3 KEITH

11:08:08 - Add Ins: Taylor, Anne
object to general nature - speculative - lack foundation

11:08:21 - Add Ins: Taylor, Anne
Not familiar with Caro/dog that did search in this case

11:08:35 - Add Ins: Verharen, Art
I'll rephrase question

11:08:40 - Add Ins: HUTCHESON, W3 KEITH

11:08:53 - Add Ins: Taylor, Anne
object - relevance - we have no foundation - hasn't worked with Karo

11:09:14 - Judge: Hosack, Charles
overrule

11:09:16 - Add Ins: HUTCHESON, W3 KEITH
Describes Baron's behavior when he alerted on a substance.

11:10:43 - Add Ins: HUTCHESON, W3 KEITH
Have been around Karo - hundreds of times - thru training. Karo is very

11:12:43 - Add Ins: HUTCHESON, W3 KEITH
excited and very dramatic. Seen Shaw's dog engage in significant change of

11:13:10 - Add Ins: HUTCHESON, W3 KEITH
behavior on many occasions.

11:13:21 - Add Ins: Taylor, Anne
objection - foundation - he observe dKaro in training exercises

11:13:43 - Judge: Hosack, Charles
overrule/foundational

11:13:52 - Add Ins: HUTCHESON, W3 KEITH
Karo's dog is very confident - very good dog. Karo would exhibit change of

11:14:32 - Add Ins: HUTCHESON, W3 KEITH
behavior and then alert. If I was to engage in vehicle search using Karo and

11:15:02 - Add Ins: HUTCHESON, W3 KEITH
saw significant change of behavior, would have no hesitation believing there

11:15:16 - Add Ins: HUTCHESON, W3 KEITH
were drugs. Karo acts a lot like Baron. He works it very hard. Residual odor

11:16:18 - Add Ins: HUTCHESON, W3 KEITH
described. Dog would alert on residual odor.

11:17:04 - Add Ins: Taylor, Anne
CX W3

11:17:11 - Add Ins: HUTCHESON, W3 KEITH
I certify dogs and teams for POST in Idaho. We put policies in as a K-9

11:18:05 - Add Ins: HUTCHESON, W3 KEITH
group. State Idaho finalized requirements in Oct 2005.

11:18:24 - Add Ins: HUTCHESON, W3 KEITH
I observed Dep Shaw and Karo in training. Couple times observed them in real

11:18:58 - Add Ins: HUTCHESON, W3 KEITH
world/on street. Discusses certification process/training. Residual odor

11:20:47 - Add Ins: HUTCHESON, W3 KEITH
discussed. Reviews EXS A, B, C and D. I created narcotic form myself.

11:24:50 - Add Ins: HUTCHESON, W3 KEITH
(2005 report discussed) EX D covers patrol and narcotics.

11:26:44 - Add Ins: Verharen, Art
PA - no RDX

11:26:53 - Judge: Hosack, Charles
Excuses W3

11:27:10 - Add Ins: Verharen, Art
2 more witnesses - one brief/one deputy shaw.

11:27:21 - Add Ins: Taylor, Anne
my witnesses were the same. I have one additional witness.

11:27:33 - Judge: Hosack, Charles
recess

11:27:40 - Operator
Stop recording: (On Recess)

11:39:53 - Operator
Recording:

11:39:53 - Record
Gosch, Kirk J

11:40:05 - Add Ins: Verharen, Art
Calls W4 DX

11:40:11 - Other: clerk
swears

11:40:19 - Other: SHAW, W4 JASON JOHN

Deputy KCSO. P.O. since 199. Post certified. Describes duties - K-9

11:40:39 - Other: SHAW, W4 JASON JOHN
handler. Certified with Karo in 2003.

11:41:58 - Add Ins: SHAW, W4 JASON
Work with Karo on daily basis for lat 3 years. I'm familiar with dog's

11:42:20 - Add Ins: SHAW, W4 JASON
behavior re searches for illegal drugs. In January 2005 - we were certified

11:42:39 - Add Ins: SHAW, W4 JASON
to do searchs for illegal drugs in State Idaho. My dog is very reliable.

11:43:09 - Add Ins: SHAW, W4 JASON
False alert is if dog displayed a change of behavior and passive response and

11:43:21 - Add Ins: SHAW, W4 JASON
no controlled substance was found. When my dog smells odor of controlled

11:44:10 - Add Ins: SHAW, W4 JASON
substance - he does change of behavior. Describes changes of behavior. When

11:45:37 - Add Ins: SHAW, W4 JASON
def gets close enough to source he will alert/sit down.

11:46:51 - Add Ins: SHAW, W4 JASON
January 6 2005 - 11974 N. Rimrock Road - called to search with dog. We first

11:47:10 - Add Ins: SHAW, W4 JASON
searched white GMC pickup/located in driveway. Started on front driver

11:47:28 - Add Ins: SHAW, W4 JASON
side/worked counterclockwise. On back/driver's side - dog left my side and

11:47:44 - Add Ins: SHAW, W4 JASON
went to white suzuki auto - change of behavior. He was gettng odor from

11:48:02 - Add Ins: SHAW, W4 JASON
suzuki. He intently sniffed back end of car - tail wagging. He returned to

11:48:16 - Add Ins: SHAW, W4 JASON
me. We con't with search of pickup truck. No change behavior on GMC. We

11:48:33 - Add Ins: SHAW, W4 JASON
returned to suzuki car - did same procedure starting from driver headlight.

11:48:55 - Add Ins: SHAW, W4 JASON
Near passenger rear well - Karo tried to push his head into wheel well of

11:49:12 - Add Ins: SHAW, W4 JASON
car. I moved to back of vehcile - he cont'd follow my presentations - cont'd

11:49:25 - Add Ins: SHAW, W4 JASON
sniffing back of vehicle. That was significant change of behavior - suzuki

11:49:46 - Add Ins: SHAW, W4 JASON
emitted odor of controlled substance - dog could'nt pinpoint source.

11:50:07 - Add Ins: SHAW, W4 JASON
I con'td to passenger side vehicle - Karo returned to back vehcile/cont'd

11:50:22 - Add Ins: SHAW, W4 JASON
sniff. I opened driver's side - Karo worked the seat - he tried to get into

11:50:44 - Add Ins: SHAW, W4 JASON
back area - he jumped up on seat. He worked directly to back of vehicle. He

11:51:00 - Add Ins: SHAW, W4 JASON
couldnt get back there - I remvoed Dog - pulled out bean bag and bags

11:51:12 - Add Ins: SHAW, W4 JASON
clothing to facilitate dog's search - he passively alerted on top/bottom seat

11:51:25 - Add Ins: SHAW, W4 JASON
where they meet. I hand searched area - never located visible substances.

11:51:39 - Add Ins: SHAW, W4 JASON
I worked top seam latch area. Dog attempted to get body thru side of hatch -

11:52:05 - Add Ins: SHAW, W4 JASON
I believed there was odor of illegal drugs from trunk. I opened trunk

11:52:23 - Add Ins: SHAW, W4 JASON
slightly, dog nosed up trunk, he alerted and immediately pulled out and sat.

11:52:42 - Add Ins: SHAW, W4 JASON
Green leafy substance and white substance found in trunk. I did let dog in

11:53:10 - Add Ins: SHAW, W4 JASON
gmc pickup - no change of behavior.

11:53:18 - Add Ins: SHAW, W4 JASON

11:54:02 - Add Ins: Taylor, Anne
CXW4

11:54:09 - Add Ins: SHAW, W4 JASON
Upon arrival, don't know who I first talked to. I talked with Terry Morgan,

11:54:51 - Add Ins: SHAW, W4 JASON
Erick Clemons on scene.

11:55:12 - Add Ins: SHAW, W4 JASON
No change of behavior on GMC. The behavior change was that dog left my side

11:55:59 - Add Ins: SHAW, W4 JASON
and sniffed the Suzuki car wheel well.

11:56:33 - Add Ins: SHAW, W4 JASON
Dog has made alerts when no substances were found - could be because residual

11:56:51 - Add Ins: SHAW, W4 JASON
odor. Describes residual odor. My dog has had very few alerts when

11:58:18 - Add Ins: SHAW, W4 JASON
substances were not found. It does happen. When I unlatched the trunk and

11:58:39 - Add Ins: SHAW, W4 JASON
Karo alerted, white plastic bag/clear - could see marijuana. A vehicle was

11:59:10 - Add Ins: SHAW, W4 JASON
also in trunk. Passenger area had items. I keep records on my dog. Monthly

11:59:57 - Add Ins: SHAW, W4 JASON
and yearly reports. A, B, C and D - statistic reports. These relate to Karo -

12:00:32 - Add Ins: SHAW, W4 JASON
2003, 2003, 2004 and 2005. Reports discussed. A great deal of searches don't

12:01:54 - Add Ins: SHAW, W4 JASON
have finds

12:01:56 - Add Ins: Taylor, Anne
Offer A, B, C and D.

12:02:02 - Judge: Hosack, Charles
admit A, B, C and D.

12:02:25 - Add Ins: SHAW, W4 JASON
32 searches/16 didn't have finds

12:03:16 - Add Ins: Verharen, Art
RDX W4

12:03:22 - Add Ins: SHAW, W4 JASON
Unreliability is that I have to certify 100% in State. I do interview of

12:03:51 - Add Ins: SHAW, W4 JASON
person after change behavior without finds, I trust dog very much. Interview

12:04:05 - Add Ins: SHAW, W4 JASON
establishes why there was alert or change of behavior.

12:04:24 - Judge: Hosack, Charles
Step down/excuses

12:05:03 - Add Ins: Verharen, Art
CALLS W5

12:05:09 - Other: clerk
swears

12:05:22 - Other: BERGER, W5 PAUL
ISP Detective. January 6, 2005 at 11974 N. Rimrock Road - participated in

12:05:36 - Other: BERGER, W5 PAUL
SW. Deputy Shaw called to scene - K9 was to be utilized to search. Erick

12:06:13 - Other: BERGER, W5 PAUL
Clemenson advised Shaw suzuki was included in search

12:06:26 - Add Ins: Taylor, Anne
CX W5

12:06:38 - Other: Berger, W5 Detective
I processed evidence. Mr Gosch was present during search. B. Capello was

12:07:08 - Other: Berger, W5 Detective
sitting in another room of house/away from Gosch. Kyle McCormack was

12:07:18 - Other: Berger, W5 Detective
released. SW obtained by Detective Morgan. I was assisting in control of

12:08:00 - Other: Berger, W5 Detective
scene. Sp Agent Clemenson with Morgan to obtain SW. Served SW approx. 1:30

12:08:21 - Other: Berger, W5 Detective
pm. I was there in a.m. at some point. Dont' recall vehicles present in

12:08:37 - Other: Berger, W5 Detective
a.m. I recall black jeep. Items in residence - items assoc. with manuf of

12:09:14 - Other: Berger, W5 Detective
oil, honey oil, pipes, container of MSM, grinder, pkging materials, phone

12:09:47 - Other: Berger, W5 Detective
lists, etc.

12:09:55 - Add Ins: Verharen, Art
relevance/obj

12:10:04 - Add Ins: Verharen, Art
Not relevant to this hearing

12:10:08 - Judge: Hosack, Charles
overrule

12:10:17 - Other: BERGER, W5 PAUL
MSM is dietary supplement.

12:10:29 - Other: BERGER, W5 PAUL
Took custody of items retrieved from white sedan - pkg of cocaine, couple

12:10:46 - Other: BERGER, W5 PAUL
pkgs marij, reddish dark substance.

12:11:14 - Judge: Hosack, Charles
Step down

12:11:19 - Add Ins: Verharen, Art
Completes evidence

12:11:26 - Add Ins: Taylor, Anne
CALLS w6

12:11:33 - Other: Clerk
swears W6

12:12:11 - Other: SHERMAN, W6 - MARK

POLICE OFFICER FOR CITY OF RATHDRUM. 4 yrs. POST certified. Know Dep. Shaw.

12:12:36 - Other: SHERMAN, W6 - MARK

Worked with Deputy Shaw - prior arrest - observed Karo work around vehicle,

12:12:56 - Other: SHERMAN, W6 - MARK

- not familiar with dogs reactions. There were syringes found in vehicle

12:13:18 - Other: SHERMAN, W6 - MARK

that tested positive for meth. Had conversation with Dep. Shaw re no

12:13:36 - Other: SHERMAN, W6 - MARK

substances found. Syringes on back seat discussed. Shaw said that hits do

12:14:18 - Other: SHERMAN, W6 - MARK

occur - dog still smells residual odor.

12:14:47 - Add Ins: Verharen, Art

CX W6

12:14:58 - Other: Sherman, W6 Mark

Driver suspected to use meth. Box next to syringe that had meth in it.

12:15:16 - Judge: Hosack, Charles

Step down. Excuses.

12:15:36 - Add Ins: Taylor, Anne

No other evidence.

12:15:42 - Judge: Hosack, Charles

related items in residence; marij and cocaine found in truck of suzuki

12:16:13 - Judge: Hosack, Charles

Adequacy of showing of PC for issuance of SW for residence; white suzuki-fact

12:16:35 - Judge: Hosack, Charles

SW didn't include the suzuki - need to go thru dog sniff analysis to

12:16:48 - Judge: Hosack, Charles

determine whether search is legitimate.

12:16:55 - Add Ins: Taylor, Anne

Yes. Part of auto exception goes further, car was secure where it was.

12:17:13 - Judge: Hosack, Charles

Evidence concluded. Argument?

12:17:40 - Add Ins: Taylor, Anne

Mr. Schwartz will handle argument

12:17:51 - Add Ins: Taylor, Anne

Havent' see State's brief

12:18:01 - Add Ins: Schwartz, Chris

3 diff areas of case - (1) warrant itself - based on stale information; overly

12:18:21 - Add Ins: Schwartz, Chris

broad; much information is from years prior to 2005. Information grows

12:18:46 - Add Ins: Schwartz, Chris

stale; court needs to examine totality of circumstances; no explanation for

12:19:05 - Add Ins: Schwartz, Chris

what occurred in time period of old investigation and current SW request.

12:19:18 - Add Ins: Schwartz, Chris

Needed to be showing that those practices had cont'd on - no showing that

12:19:27 - Add Ins: Schwartz, Chris

that information was presented. All evidence should be suppressed-stale.

12:19:39 - Add Ins: Schwartz, Chris

(2) dog search - use of dog was invalid extension of search; police had ample

12:19:49 - Add Ins: Schwartz, Chris

opportunity for suzuki to be included in SW. Invalid extension of SW. Dep

12:20:29 - Add Ins: Schwartz, Chris
Shaw was told the suzuki was included in SW. Extension of SW is invalid/no

12:20:51 - Add Ins: Schwartz, Chris
justification. Deputy Shaw acted under incorrect information to do search.

12:21:32 - Add Ins: Schwartz, Chris
(3) information about Karo itself. If court reviews information presented,

12:21:52 - Add Ins: Schwartz, Chris
dog had 50% accuracy rating. Not reliable enough accounting to justify

12:22:10 - Add Ins: Schwartz, Chris
warrantless search based on that information. Officer Sherman testimony

12:22:23 - Add Ins: Schwartz, Chris
referred to. Sometimes alerts without finds.

12:22:39 - Add Ins: Verharen, Art

12:22:41 - Judge: Hosack, Charles
Reliability of dog - record doesn't tell me (ex A) in 32 searches, there were

12:22:56 - Judge: Hosack, Charles
16 times items were found. Nothing tells me there was anything in the other

12:23:10 - Judge: Hosack, Charles
16 that there was no alert where there was a controlled substance. How does

12:23:22 - Judge: Hosack, Charles
tis show a mistake by the dog.

12:23:27 - Add Ins: Schwartz, Chris
Dog would be requested to perform a search - it would then result in an

12:23:40 - Add Ins: Schwartz, Chris
alert. 32 alerts, 16 times nothing found. ONLY sometimes does it actually

12:24:01 - Add Ins: Schwartz, Chris
find something. Apparent this dog has tendency to alert on items not

12:24:26 - Add Ins: Schwartz, Chris
controlled substances. Needs to be reasonable suspicion without SW.

12:24:53 - Add Ins: Verharen, Art
Counsel argues that docs show false alerts.

12:25:06 - Judge: Hosack, Charles
That is what I understand

12:25:14 - Add Ins: Verharen, Art
Evidence is that dog has never done false alert. That is only evidence

12:25:24 - Add Ins: Verharen, Art
before the court. Docs don't show reliability. Dog is reliable. Never had

12:25:36 - Add Ins: Verharen, Art
false alerts.

12:25:39 - Judge: Hosack, Charles
I can't make that from these docs. Records is not here.

12:25:56 - Add Ins: Verharen, Art
Officer Sherman testified re residual odor - same situation that Hutheson and

12:26:09 - Add Ins: Verharen, Art
Shaw talked about re residual odor. Dog did exhibit behavior - deputy

12:26:51 - Add Ins: Verharen, Art
believed there were drugs inside car. There was PC based on K-9 search for

12:27:11 - Add Ins: Verharen, Art
search of suzuki. Vehcile exception search - Magistrate found residence

12:27:26 - Add Ins: Verharen, Art
contaned evidence of illegal drugs; officers see items coming out of

12:27:39 - Add Ins: Verharen, Art
residence being loaded into vehicles; can make assumption that there is

12:27:50 - Add Ins: Verharen, Art
strong possibility that items included in SW are now in vehicles.

12:28:54 - Add Ins: Verharen, Art
re SW itself - don't have a transcript of SW.

12:29:04 - Judge: Hosack, Charles
wasn't able to locate it.

12:29:09 - Add Ins: Verharen, Art
Don't see that you can even rule on validity of SW when transcript is not

12:29:22 - Add Ins: Verharen, Art
even prepared. Evidentiary portion of hrg is closed. Defense didn't provide

12:29:38 - Add Ins: Verharen, Art
evidence to the court - Court can't reach that issue. Without transcript,

12:29:58 - Add Ins: Verharen, Art
court can't made adequate ruling. Defense hasn't provided court with

12:30:09 - Add Ins: Verharen, Art
evidence. Court must go on record before it. SW was valid - nothing to

12:30:23 - Add Ins: Verharen, Art
indicate it was not. Ask court deny Mot/Suppress on SW grounds

12:30:33 - Add Ins: Schwartz, Chris
All previous pleadings and docs are part of record/take judicial notice. All

12:30:46 - Add Ins: Schwartz, Chris
evidence we presented is from the tape of SW hearing. That should be in the

12:30:56 - Add Ins: Schwartz, Chris
file that we are able to review.

12:31:01 - Judge: Hosack, Charles
There may be a take somewhere, but there is nothing of record in this case

12:31:11 - Judge: Hosack, Charles
with regard to the hearing on PC. No transcript submitted. Not proper for

12:31:29 - Judge: Hosack, Charles
court to go on fact finding missions to find potential evidence. There is no

12:31:47 - Judge: Hosack, Charles
record of hearing on PC finding of Judge Swanstrom.

12:31:55 - Add Ins: Schwartz, Chris
We rec'd tape of hearing from the court.

12:32:06 - Judge: Hosack, Charles
You need to figure out the difference between a tape from a building and what

12:32:16 - Judge: Hosack, Charles
is in the record.

12:32:18 - Judge: Hosack, Charles
RE: exception for search of vehicle. Inevitable discovery doctrine, are you

12:33:00 - Judge: Hosack, Charles
talking about SW itself?

12:33:43 - Add Ins: Verharen, Art
I filed brief couple days ago - didn't have counsel's brief that raised issue

12:33:53 - Add Ins: Verharen, Art
of SW - didn't feel it was an issue when brief prepared. Inevitable discovery

12:34:17 - Add Ins: Verharen, Art
doctrine relates to dog sniff of white sedan.

12:34:26 - Judge: Hosack, Charles

TAKE UNDER ADVISEMENT. Court will review Idaho cases on drug dog sniffs.

12:35:18 - Judge: Hosack, Charles

Case law direction is pretty uniform - unless court finds dog is not

12:35:28 - Judge: Hosack, Charles

reliable, the alert or change in behavior that signifies detection of odor of

12:35:45 - Judge: Hosack, Charles

illegal substances is all that is needed for the search. Want to review the

12:35:55 - Judge: Hosack, Charles

cases - this diff fact situation. UNDER ADVISEMENT.

12:36:44 - Operator

Stop recording:

STATE OF IDAHO }
County of Kootenai } ss

FILED 1-30-06

At 8:14 O'clock A.M.

CLERK OF THE DISTRICT COURT

Deputy

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,

Plaintiff,

vs.

KIRK J. GOSCH,

Defendant.

Case No. CR-05-403

MEMORANDUM OPINION

Art Verharan, Kootenai Co. Prosecutor's Office, for Plaintiff.
Anne Taylor, Kootenai Co. Public Defender's Office, for Defendant.

I.

FACTS AND PROCEDURAL HISTORY

On December 2, 2004, Defendant Kirk Gosch was stopped in his vehicle by Hayden City police officers and cited for possession of marijuana and paraphernalia. Defendant's criminal history includes a prior arrest, in October 2003, for possession of paraphernalia. This information was communicated to the Idaho State Police (hereinafter "ISP"). At the time, the ISP had reports dating back approximately two years of

Defendant's involvement in a marijuana smuggling operation between Canada and Kootenai County.

In late December, the ISP conducted a garbage pull at Defendant's residence, Officers found several plastic baggies with corners cut off, as well as some baggies with a white powdery substance in them.

On January 6, 2005, the ISP initiated surveillance on the Defendant's residence, during which officers conducted another garbage pull. As a result of that pull, officers found heat-sealed plastic bags, some bearing labels of "A" or "B," which markings are used to denote grades of marijuana from Canada. Officers also found plant stems, which tested positive for marijuana, several large butane gas cylinders, and two broken glass jars, which tested positive for THC. Last, officers found several zip lock baggies emanating a strong odor of marijuana and containing a green leafy substance.

As a result of this evidence, ISP Detective Morgan requested a search warrant for Defendant's residence and vehicle. The magistrate court granted a search warrant for 11974 N. Rimrock Road, Kootenai County, ID, and for a black 1996 Jeep registered to the Defendant. The warrant authorized officers to search for evidence and fruits of the crimes of Trafficking in Marijuana and Conspiracy to Traffic in Marijuana.

Prior to execution of the search warrant, one of the surveillance officers, ISP Detective Carlock, observed Defendant and two other individuals carrying items from Defendant's residence to an area in which two vehicles were parked. From Detective Carlock's position, she could not always detect which vehicle the items were loaded into. However, Detective Carlock testified that she observed items being placed into a black

Jeep, and, on at least one occasion, she observed Defendant load items into a white Suzuki.

The search warrant was executed at approximately 1:30 p.m. During execution of the warrant, a canine unit was used to investigate two vehicles located on the premises but not listed in the search warrant: a white Suzuki sedan registered to Defendant, and a white GMC pickup truck. Cocaine and marijuana were subsequently found in the trunk of the Suzuki.

In the house, officers found several devices used for the ingestion of marijuana and several glass vials, which contained suspected “honey oil” (a refined marijuana substance). Officers also seized from the house multiple empty glass vials, packaging materials, a bottle of MSM (commonly used as a cutting/bulking additive for cocaine distribution), and scales.

Defendant was subsequently charged with Trafficking in Cocaine, Manufacturing a Controlled Substance, Possession of a Controlled Substance with the Intent to Deliver, and Possession of Marijuana in Excess of Three Ounces. Defendant now moves for the suppression of evidence seized from his residence and the white Suzuki, on the grounds that the search warrant was improperly based on stale information and overly broad and that the search of the Suzuki was an impermissible extension of the search warrant and not within a recognized exception to the warrant requirement.

The State argues first that there is nothing in the record that would allow the Court to find that the search warrant was not properly based on probable cause and overly broad, due to the Defendant’s failure to request and make available a transcript of the search warrant hearing. Therefore, the Court should presume that probable cause

existed to support the search warrant issued. Second, the State argues that, because there existed probable cause to believe contraband would be found in the Suzuki, the search of the Suzuki was within the automobile exception to the warrant requirement.

Alternatively, the State argues that the doctrine of inevitable discovery should be applied so as to prevent suppression of the evidence seized from the Suzuki.

For the reasons discussed in this memorandum opinion, Defendant's motion to suppress is denied.

II.

DISCUSSION

A. The Court Cannot Conclude that the Search Warrant Lacked Probable Cause or Was Overbroad.

Defendant argues that the evidence seized from his residence should be suppressed on the grounds that the warrant authorizing the search of the residence was improperly based on stale information and overly broad. The State argues in response that there is nothing before the Court which would allow the Court to make such a determination, since the Defendant has not placed into the record a transcript of the search warrant hearing.

In reviewing a lower court's determination of probable cause, an appellate court examines the warrant affidavit submitted to the magistrate to determine whether it provided the magistrate with a substantial basis for concluding that probable cause existed. State v. Yager, 139 Idaho 680, 662, 85 P.3d 656, 686 (2004). Where sworn testimony at a search warrant hearing takes the place of a warrant affidavit, the testimony is part of the appellate record and is reviewed in transcript form. See Id. Great deference

is given to the probable cause determinations of magistrates, and doubts are resolved in favor of the warrant. Id.

A defendant challenging a magistrate court's issuance of a warrant in the context of a motion to suppress before the district court is essentially an appellant claiming error in a lower court's decision. It is well established that an appellant bears the burden to provide an adequate record upon which the appellate court can review the merits of the claims of error. State v. Coma, 133 Idaho 29, 34, 981 P.2d 754, 759 (Ct. App. 1999). Where pertinent portions of the record are missing on appeal, they are presumed to support the actions of the trial court. Id.

Although Defendant's counsel invites the Court to take judicial notice of the testimony before the magistrate court when it made the decision to issue a search warrant for Defendant's residence, counsel does not provide the Court with a method by which the Court may review said testimony. Defendant has neither provided the Court with a copy of a transcript of the search warrant hearing, nor cited to the record with any specificity as to which facts relied upon by the magistrate court were stale and therefore did not add up to probable cause to support the issuance of the search warrant. Instead, Defendant's counsel simply suggests that the Court obtain a tape of the search warrant hearing and make its determination upon review of the tape.

The burden is on the defendant to establish that the issuance of a search warrant was not supported by probable cause. State v. Patterson, 139 Idaho 858, 863, 87 P.3d 967, 972 (Ct. App. 2004). Having failed to provide an adequate record from which the Court may make such a determination, Defendant has failed to meet this burden.

Accordingly, the Court cannot find that the search warrant issued for Defendant's residence and Jeep lacked probable cause or was overly broad.

B. The Search of the Suzuki was Within the Automobile Exception to the Warrant Requirement.

The State argues that the facts known to the officers at Defendant's residence, at the time of the execution of the search warrant, established probable cause to believe the Suzuki contained evidence of a crime. Having probable cause, the officers were then permitted to search the Suzuki without obtaining a warrant. In response, Defendant urges this Court to distinguish between the circumstances of this case and the usual traffic stop, during which it is well-established law that an officer may employ the use of a narcotic detecting dog to sniff the exterior of a lawfully stopped vehicle.

Both the Fourth Amendment of the U.S. Constitution and Article I of the Idaho Constitution prohibit unreasonable searches and seizures. The warrantless search of an automobile is presumptively unreasonable; however, this presumption may be overcome, if the evidence establishes that the search comes within one of the few specifically established and well-delineated exceptions to the warrant requirement or was otherwise reasonable under the circumstances. See State v. Weaver, 127 Idaho 288, 290, 900 P.2d 196, 198 (1995). The burden of overcoming a presumption of unreasonableness is on the state. See Id.; See also Flippo v. West Virginia, 528 U.S. 11, 13 (1999).

Under the automobile exception to the warrant requirement, police may search an automobile and the containers within it when they have probable cause to believe that the automobile contains contraband or evidence of a crime. State v. Gibson, 141 Idaho 277, ___, 108 P.3d 424, 428 (Ct. App. 2005) (citing State v. Gallegos, 120 Idaho 894, 898, 821 P.2d 949, 953 (1991)). The exception is based upon "both the automobile's ready

mobility . . . and upon the lesser expectation of privacy in an automobile as compared to the privacy interest in a home.” Gibson, at ___, 108 P.3d at 428-429 (citing California v. Carney, 471 U.S. 386, 390- 92 (1985), and State v. Bottelson, 102 Idaho 90, 93, 625 P.2d 1093, 1096 (1981)). As a result, courts have focused on the apparent ready mobility and location of a subject vehicle when deciding whether or not the automobile exception should apply. The Supreme Court in Carney explained:

When a vehicle is being used on the highways, or if it is readily capable of such use and is found stationary in a place not regularly used for residential purposes--temporary or otherwise--the two justifications for the vehicle exception come into play. First, the vehicle is obviously readily mobile by the turn of an ignition key, if not actually moving. Second, there is a reduced expectation of privacy stemming from its use as a licensed motor vehicle subject to a range of police regulation inapplicable to a fixed dwelling. At least in these circumstances, the overriding societal interests in effective law enforcement justify an immediate search before the vehicle and its occupants become unavailable.

Carney, at 392-393.

As the above-cited language and existing case law make clear, the automobile exception is not limited to vehicles stopped on a highway, but extends to vehicles parked in private driveways. See e.g. United States v. Hatley, 15 F.3d 856, 859 (9th Cir.1994) (holding that the automobile exception applied to an apparently mobile vehicle parked in a private driveway, even though the vehicle was later discovered to be inoperable); United States v. Markham, 844 F.2d 366, 368 (6th Cir.1988) (concluding that the automobile exception applied to an unoccupied motor home parked in a private driveway). See also State v. Bottelson, 102 Idaho 90, 625 P.2d 1093 (1981) (holding that automobile exception applied to vehicle parked in private driveway, where there was “abundant” probable cause to suspect that a burglary was in progress).

In the present case, Defendant contends that since the Suzuki “was not about to be moved” and was “secure where it was,” the mobility concerns that justify the automobile exception were not present when the Suzuki was searched without a warrant. This assertion is simply not supported by existing case law. The distinction between vehicles that may be searched without a warrant and those that may not is not made based on whether or not the subject vehicle is “secure” or “not about to be moved.” Rather, the distinction primarily rests on the ability of the subject vehicle to be readily moved to another location. Here, the Suzuki was located in a driveway in close proximity to Defendant’s residence. There was no testimony that it was mounted on blocks, had flat tires or was otherwise inoperable. Cf. Hatley, at 859. Contrary to Defendant’s argument, the actions of the Defendant on the day of the search indicate that he was using, or was about to use, both the Suzuki and the Jeep to transport belongings from his residence to another location, which in and of itself indicates that the Suzuki was capable of being moved in the manner contemplated by the automobile exception. The fact that the Suzuki was parked in a residential driveway and without an operator when the warrantless search commenced does not place the Suzuki outside of the automobile exception.

Having found the Suzuki to be a readily mobile vehicle within the meaning of the automobile exception, the Court now turns to the question of whether or not the police had probable cause to suspect the Suzuki contained contraband or evidence of a crime. When a reliable drug-detection dog indicates that a lawfully stopped vehicle contains the odor of controlled substances, the officer has probable cause to believe that there are drugs in the vehicle and may search it without a warrant. State v. Gibson, 141 Idaho 277,

_____, 108 P.3d 424, 428 (citing State v. Tucker, 132 Idaho 841, 843, 979 P.2d 1199, 1201 (1999), and Gallegos, 120 Idaho at 898, 821 P.2d at 953)). Allowing the dog to sniff along the outside of a motor vehicle does not constitute a search under the Fourth Amendment. State v. Parkinson, 135 Idaho 357, 363, 17 P.3d 301, 307 (Ct. App. 2000).

Kootenai County Police Deputy Shaw was called by the ISP to assist in the execution of the search warrant. When Deputy Shaw arrived, execution of the search warrant was already underway. Like the other officers at Defendant's residence, Deputy Shaw and his dog, Karo, were lawfully on the premises. Cf. State v. Sapp, 110 Idaho 153, 715 P.2d 366 (Ct. App. 1986) (holding that the backyard of a residence was within the scope of a search warrant authorizing a search of the "premises"). While lawfully on the premises, Deputy Shaw walked Karo around the GMC pickup and Suzuki. Karo exhibited several changes of behavior relevant to the Suzuki, which indicated to Deputy Shaw that Karo was detecting the odor of narcotics on or in the Suzuki, although Karo could not, from the exterior, pinpoint the source of the odor. At this point, Deputy Shaw had probable cause to conduct a warrantless search of the Suzuki. As Karo's handler since 2002, Deputy Shaw was trained and experienced in recognizing the changes in Karo's behavior as indicative of the presence of at least the odor of controlled substances. Karo is certified as a narcotics detecting dog in both Washington and Idaho, and there is sufficient evidence in the record establishing that Karo is reliable in this regard.

Having observed an alert to the presence of the odor of a controlled substance by a reliable narcotics detecting dog, the officers in the present case had probable cause to believe that the Suzuki contained contraband or evidence of a crime. The officers were permitted to search the vehicle without obtaining a warrant. Although the use of the

canine unit in this case was not in the context of a routine traffic stop, as is the usual canine unit scenario involved in Idaho's reported cases, the Court finds that its use did not violate the Defendant's Constitutional rights.

III.

CONCLUSION

For the foregoing reasons, Defendant's Motion to Suppress is denied.

Entered this 27 day of January, 2006.


Charles W. Hosack, District Judge

CERTIFICATE OF MAILING/DELIVERY

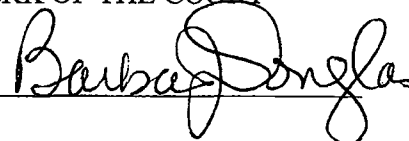
On this 30 day of January, 2006, a true and correct copy of the foregoing was mailed in the U.S. Mail, postage prepaid, sent via facsimile, or sent via interoffice mail as indicated below to the following counsel:

Kootenai County Prosecutor's Office
Art Verharen
Box 446-1833

1-30-06 @ 8:14 Am BDr

Kootenai County Public Defender's Office
Anne Taylor
Box 446-1701

DANIEL ENGLISH
CLERK OF THE COURT

By 

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED:

WILLIAM J. DOUGLAS
Prosecuting Attorney
501 Government Way/Box 9000
Coeur d'Alene, ID 83814
Telephone: (208) 446-1800
ASSIGNED ATTORNEY:
ARTHUR VERHAREN

2006 FEB -2 PM 3: 58

CLERK DISTRICT COURT

~~DEPUTY~~

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,

Case No. CRF 05-403

Plaintiff,

vs.

**MOTION FOR COMMITTAL OF
DEFENDANT UPON CONVICTION**

KIRK J. GOSCH,

Defendant.

COMES NOW, Arthur Verharen, Deputy Prosecuting Attorney for Kootenai County,
and, pursuant to I.C. § 19-2319, hereby moves this Honorable Court for its Order committing the
defendant upon conviction to the custody of the Kootenai County Sheriff's Department to await
judgment from the Court in this matter.

DATED this 2 day of FEBRUARY, 2006.

ARTHUR VERHAREN
Deputy Prosecuting Attorney

CERTIFICATE OF MAILING

I hereby certify that on the 2 day of FEBRUARY, 2006, a true and correct copy was sent via interoffice mail to the PUBLIC DEFENDERS OFFICE,

MOTION FOR COMMITMENT UPON CONVICTION - 1

ORIGINAL

WILLIAM J. DOUGLAS
Prosecuting Attorney
501 Government Way/Box 9000
Coeur d'Alene, ID 83816-9000
Telephone: (208) 446-1800

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED:

2006 FEB -2 PM 3: 58

CLERK DISTRICT COURT


DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)	Case No. F05-403
)	
Plaintiff,	)	PLAINTIFF'S REQUESTED
	)	JURY INSTRUCTIONS
vs.)	
)	
KIRK J. GOSCH,)	
)	
Defendant.)	

The Plaintiff herein respectfully submits the following jury instructions in addition to the
Court's general instructions on the law.

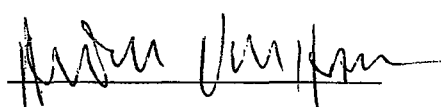
DATED this 1 day of FEBRUARY, 2006.

WILLIAM J. DOUGLAS
Prosecuting Attorney for
Kootenai County, Idaho


ARTHUR VERHAREN
Deputy Prosecuting Attorney

CERTIFICATE OF MAILING

I hereby certify that on the 1 day of FEBRUARY, 2006, a true and correct copy of the
foregoing was caused to be sent to defense counsel.
PUBLIC DEFENDERS OFFICE, I.O.M.



PLAINTIFF'S REQUESTED
INSTRUCTION NO. 1

YOU ARE INSTRUCTED that the defendant, KIRK JUILLARD GOSCH, is charged with the crime of Trafficking in Cocaine, alleged to have occurred as follows: That the defendant, KIRK JUILLARD GOSCH, on or about the 6th day of January, 2005, in the County of Kootenai, State of Idaho, did knowingly possess twenty-eight (28) grams or more of cocaine, a Schedule II controlled substance, or of any mixture or substance containing a detectable amount of cocaine. To this charge the defendant has plead not guilty.

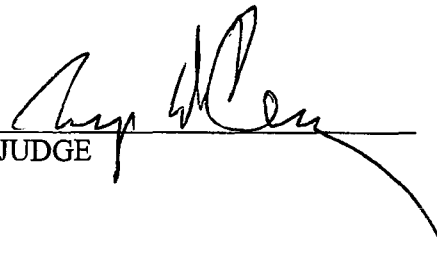
Citation: 37-2732

GIVEN: _____

REFUSED: _____

MODIFIED: _____

COVERED: X


JUDGE

PLAINTIFF'S REQUESTED
INSTRUCTION NO. 2

YOU ARE INSTRUCTED that the defendant, KIRK JUILLARD GOSCH, is charged with the crime of Manufacturing a Controlled Substance, alleged to have occurred as follows: That the defendant, KIRK JUILLARD GOSCH, on or about the 6th day of January, 2005, in the County of Kootenai, State of Idaho, did unlawfully manufacture a controlled substance, to-wit: Marijuana, a Schedule I controlled substance, by compounding or converting or processing marijuana into honey oil. To this charge the defendant has plead not guilty.

Citation: 37-2732

GIVEN: _____

REFUSED: _____

MODIFIED: _____

COVERED: ☒ _____



JUDGE

PLAINTIFF'S REQUESTED

INSTRUCTION NO. 3

YOU ARE INSTRUCTED that the defendant, KIRK JUILLARD GOSCH, is charged with the crime of Possession of a Controlled Substance With the Intent to Deliver alleged to have been committed as follows: that the defendant, KIRK JUILLARD GOSCH, on or about the 6th day of January, 2005, in the County of Kootenai, State of Idaho, did unlawfully possess a controlled substance, to wit: Marijuana, a Schedule I controlled substance, with the intent to deliver the aforementioned controlled substance. To this charge the defendant has pled not guilty.

CITATION NO. 37-2732(a)

Given _____
Refused _____
Modified _____
Covered ✓ _____

B. H.
JUDGE

PLAINTIFF'S REQUESTED

INSTRUCTION NO. 4

YOU ARE INSTRUCTED that the defendant, KIRK JUILLARD GOSCH, is charged with the crime of Possession of Marijuana in Excess of Three Ounces alleged to have been committed as follows: that the defendant, KIRK JUILLARD GOSCH, on or about or 6th day of January, 2005, in the County of Kootenai, State of Idaho, did unlawfully possess a controlled substance, to-wit: Marijuana, a Schedule I controlled substance, in an amount in excess of three (3) ounces. To this charge the defendant has pled not guilty.

CITATION NO. 37-2732(c)(1)

Given _____
Refused _____
Modified _____
Covered ✓



JUDGE

PLAINTIFF'S REQUESTED

INSTRUCTION NO. 5

In order for the defendant to be guilty of Trafficking in Cocaine, the state must prove each of the following:

1. On or about the 6th day of January, 2005;
2. In the State of Idaho;
3. The defendant, KIRK JUILLARD GOSCH, possessed cocaine;
4. the defendant knew it was cocaine;
5. the amount of cocaine was twenty-eight (28) grams or more.

If each of the above has been proven beyond a reasonable doubt, you must find the defendant guilty. If any of the above has not been proven beyond a reasonable doubt, then you must find the defendant not guilty.

CITATION: ICJI

Given: _____
Refused: _____
Modified: ☒ _____
Covered: _____



JUDGE

PLAINTIFF'S REQUESTED

INSTRUCTION NO. 6

In order for the defendant to be guilty of Manufacturing a Controlled Substance, the state must prove each of the following:

1. On or about the 6th day of January, 2005;
2. In the State of Idaho;
3. The defendant, KIRK JUILLARD GOSCH, manufactured marijuana.

If each of the above has been proven beyond a reasonable doubt, you must find the defendant guilty. If any of the above has not been proven beyond a reasonable doubt, then you must find the defendant not guilty.

CITATION: ICJI

Given: _____
Refused: _____
Modified: ☒ _____
Covered: _____



JUDGE

PLAINTIFF'S REQUESTED

INSTRUCTION NO. 7

In order for the defendant to be guilty in of Possession of a Controlled Substance With the Intent to Deliver, the State must prove each of the following:

1. On or about 6th day of January, 2005;
2. in the state of Idaho;
3. the defendant, KIRK JUILLARD GOSCH, possessed Marijuana;
4. the defendant knew it was a Marijuana;
5. the defendant intended to deliver or furnish the substance to another.

If any of the above has not been proven beyond a reasonable doubt, then you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, you must find the defendant guilty.

CITATION NO. ICJI 403

Given _____
Refused _____
Modified ✓ _____
Covered _____



JUDGE

PLAINTIFF'S REQUESTED
INSTRUCTION NO. 8


In order for the defendant to be guilty of Possession of Marijuana in Excess of Three Ounces,
the state must prove each of the following:

1. On or about or 6th day of January, 2005;
2. in the state of Idaho;
3. the defendant, KIRK JUILLARD GOSCH, possessed Marijuana;
4. the defendant knew that it was Marijuana;
5. the amount of marijuana was more than three (3) ounces.

If any of the above has not been proven beyond a reasonable doubt, then you must find the
defendant not guilty. If each of the above has been proven beyond a reasonable doubt, you must find
the defendant guilty.

CITATION NO. ICJI 403 (Modified)

Given _____
Refused _____
Modified ✓
Covered _____



JUDGE

PLAINTIFF'S REQUESTED

INSTRUCTION NO. 9

"Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, and includes extraction, directly or indirectly, from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container.

Citation: ICJI 426

Given: _____

Refused: _____

Modified: ✓ _____

Covered: _____



JUDGE

PLAINTIFF'S REQUESTED
INSTRUCTION NO. 10

Under Idaho law, Marijuana is a controlled substance.

Citation: ICJI 422

Given: _____
Refused: _____
Modified: _____
Covered: _____

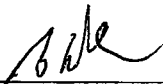
BWR
JUDGE

PLAINTIFF'S REQUESTED
INSTRUCTION NO. 11

Under Idaho law, Cocaine is a controlled substance.

Citation: ICJI 422

Given: _____
Refused: _____
Modified: _____
Covered: _____ ✓



JUDGE

INSTRUCTION NO. 12

Citation: ICJI 421

Given: _____
 Refused: _____
 Modified: _____
 Covered: _____

JUDGE

ICJI 428
DELIVERY DEFINED

PLAINTIFF'S REQUESTED
INSTRUCTION NO. 13

The term "deliver" means the transfer or attempted transfer, either directly or indirectly, from one person to another.

CITATION NO. ICJI 428

Given _____
Refused _____
Modified _____
Covered ✓


JUDGE

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)	
	)	CASE NO. CR-F05-403
Plaintiff,)	
)	
vs.)	
	)	VERDICTS
KIRK JULLIARD GOSCH,)	
)	
Defendant.)	
_____)	

We, the Jury, duly empaneled and sworn to try the above entitled action, for our verdict,
say that we find the defendant:

COUNT I

(CHOOSE ONE ONLY)

_____ GUILTY

_____ NOT GUILTY

OF TRAFFICKING IN COCAINE

COUNT II

(CHOOSE ONE ONLY)

_____ GUILTY

_____ NOT GUILTY

OF MANUFACTURING A CONTROLLED SUBSTANCE

COUNT III

(CHOOSE ONE ONLY)

_____ GUILTY

_____ NOT GUILTY

OF POSSESSION OF A CONTROLLED SUBSTANCE WITH THE INTENT TO
DELIVER

COUNT IV

(CHOOSE ONE ONLY)

_____ GUILTY

_____ NOT GUILTY

OF POSSESSION OF A MARIJUANA IN EXCESS OF THREE OUNCES

DATED the _____ day of _____, 2006.

PRESIDING OFFICER

Session: Hosack020906P
Session Date: 2006/02/08
Judge: Hosack, Charles
Reporter: Schaller, Joann

Division: DIST
Session Time: 16:24

Courtroom: Courtroom9

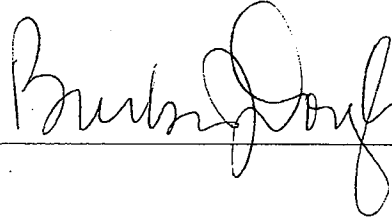
Clerk(s):
Douglas, Barbara

State Attorney(s):

Public Defender(s):

Prob. Officer(s):

Court interpreter(s):



Case ID: 0012

Case number: CR2005-403

Plaintiff:

Plaintiff Attorney:

Defendant: Gosch, Kirk J

Co-Defendant(s):

Pers. Attorney:

State Attorney:

Public Defender:

2006/02/09

17:43:03 - Operator

Recording:

17:43:03 - New case

Gosch, Kirk J

17:43:22 - Judge: Hosack, Charles

Def present; Betsy Peters and Anne Taylor present; PRETRIAL CONFERENCE. Req

17:43:59 - Judge: Hosack, Charles

for continuance by PD;

17:44:15 - Add Ins: Taylor, Anne

Mot/Continue are not in writing. Other 2 motions I'd like to be heard were

17:44:28 - Add Ins: Taylor, Anne

filed today.

17:44:30 - Judge: Hosack, Charles

Leave the matter set for trial in trailing position. We'll be in touch with

17:44:48 - Judge: Hosack, Charles

counsel - maybe we could go to different time - we'll talk about your

17:45:23 - Judge: Hosack, Charles

schedule the 1st of the week - if PH goes off, maybe we can get to trial;

17:45:40 - Judge: Hosack, Charles
Want to keep case on track. No one needs to be here at 9am on Monday, 13th.

17:45:50 - Judge: Hosack, Charles

17:45:53 - Add Ins: Taylor, Anne
Perhaps this could be set behind the case set for trial the week of 22nd. I

17:46:07 - Add Ins: Taylor, Anne
could call the court tomorrow to get a hearing on the 2 motions for late next

17:46:19 - Add Ins: Taylor, Anne
week.

17:46:39 - Judge: Hosack, Charles
Why don't you get in touch with Verharen and discuss dates - get a firm date

17:47:00 - Judge: Hosack, Charles
when you both are available the week of the 13th.

17:47:10 - Judge: Hosack, Charles
Leave set for trial so it doesn't drift away.

17:47:29 - Judge: Hosack, Charles
We have mornings next week to squeeze a hearing in.

17:47:54 - Judge: Hosack, Charles
You need to keep in touch with your counsel - situation could change

17:48:28 - Defendant: Gosch, Kirk J
understand

17:48:35 - Operator
Stop recording:

ORIGINAL

Anne C. Taylor, Deputy Public Defender
Office of the Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83814
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 5836

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED:

2006 FEB -9 AM 10:07

CLERK DISTRICT COURT

[Signature]
DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,

Plaintiff,

V.

KIRK J. GOSCH,

Defendant.

CASE NUMBER CR-05-0000403
Fel

**MOTION TO ENFORCE PLEA
AGREEMENT**

COMES NOW, the above named defendant, by and through his attorney, Anne C Taylor,
Deputy Public Defender, and hereby request an order of the court enforcing the plea agreement
entered into between the defendant and the state in January or February 2005. *(Ex A, Attached) cash*

Counsel requests that this motion be set for hearing in order to present oral argument,
evidence and/or testimony in support thereof. Requested time is 30 minutes.

DATED this 9th day of February, 2006.

OFFICE OF THE KOOTENAI
COUNTY PUBLIC DEFENDER

BY:

[Signature]
ANNE C TAYLOR
DEPUTY PUBLIC DEFENDER

MOTION TO ENFORCE PLEA AGREEMENT Page 1

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same in the interoffice mailbox on the 9th day of February, 2006, addressed to:

Kootenai County Prosecutor

Denise Cox

MOTION TO ENFORCE PLEA AGREEMENTPage 2

FEB/15/2005/TUE 04:31 PM

P. 001/001

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

State of Idaho

vs.

KIRK GOSCHRECEIVED BY
FEB 15 2005KOOTENAI COUNTY
PUBLIC DEFENDERCase no. CRF 05-403

PRETRIAL SETTLEMENT OFFER

OFFER EXPIRES 3/15/05
14 DAYS AFTER PRELIM. DATE

or other ()

The State offers that in exchange for Defendant's guilty plea(s) to:

Count	Charge	Statutory Maximum Penalty
1	POSS. COKE	7 YRS
2	MANUFACTURING MARI	5 YRS
3	POSS MARI W/INTENT	5 YRS
4	POSS MARI OVER 3 OUNCES	5 YRS

and Defendant's agreement to:

☒ Waive appeal as of right as to conviction and sentence.☒ Pay restitution: LAS COSTS

☒ Other agreements: Waive Prelim. Hearing AND I will submit to complete LAW ENFORCEMENT DEPARTMENT AND RECORDS HIS KNOWLEDGE OF DRUG TRAFFICKING AND I will ARRANGE FOR LAW ENFORCEMENT introduction to HIS SUPPLIERS so WHATEVER I ACCOMPLISHES EITHER OF THESE TASKS WILL BE DETERMINED TOGETHER BY THE STATE. 2/15/05 PLEA OFFER SUPPLEMENTARY THE STATE FURTHER
It will agree and recommend as follows: RESERVE THE RIGHT TO EITHER AMEND THE CHARGES TO MISDEMEANORS OR DISMISS THEM ENTIRELY. (A)

☐ Agreed sentence recommendation:☒ Sentence recommendation: CONCURRENT, OTHERWISE OPEN☐ To dismiss/not file sentence enhancement/habitual☒ To dismiss: TRAFFICKING IN COKE

☒ Other agreement: BOND RESOLUTION TO \$5K FOLLOWING: ① PRA OF GUILTY IN DISTRICT COURT TO ABOVE 4 CHARGES AND ② COMPLETION OF LAW ENFORCEMENT DEPARTMENT

NOTE: THE STATE'S SENTENCE RECOMMENDATION IS CONDITIONED UPON NO FTAs (INCLUDING PRE-SENTENCE INTERVIEW) AND NO NEW CRIMINAL OFFENSES BEFORE DATE OF SENTENCING.

Dated: 1/31/05

Dep. Prosecuting Attorney

REJECTION OR ACCEPTANCE OF PRETRIAL SETTLEMENT OFFER

☐ I REJECT THE ABOVE PRETRIAL SETTLEMENT OFFER.☐ I ACCEPT THE ABOVE PRETRIAL SETTLEMENT OFFER AND WAIVE THE FOLLOWING RIGHTS:

1. The right to a jury or court trial.
2. The right to be presumed innocent unless proven guilty beyond a reasonable doubt.
3. The right to confront and question the witnesses against me.
4. The right to compel witness to come to court and testify for me.
5. The right to remain silent.
6. The right to appeal as of right as to conviction and sentence.

2/17/06
EX A

Defendant

Date

Defense Attorney

Date

PRETRIAL SETTLEMENT OFFER

PA 000

ORIGINAL

Anne C. Taylor, Deputy Public Defender
Office of the Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83814
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 5836

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED:

2006 FEB -9 PM 3:18

CLERK DISTRICT COURT

DEPUTY

Cindy D. Bully

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,

Plaintiff,

V.

KIRK J. GOSCH,

Defendant.

CASE NUMBER CR-05-0000403
Fel

**MOTION FOR AN INTERLOCUTORY
APPEAL**

COMES NOW, the above-named Defendant, by and through his attorney, Anne C Taylor, Deputy Public Defender, and hereby requests permission to appeal the courts denial for the Defendant's Motion to Suppress Evidence in the above-entitled matter.

This motion is made pursuant to Rule 54 (1) of the Idaho Criminal Rules and Rule 12 of the Idaho Appellate Rules

Counsel requests this motion be set for hearing in order to present oral argument and testimony and evidence in support of the same.

DATED this 9th day of February, 2006.

OFFICE OF THE KOOTENAI
COUNTY PUBLIC DEFENDER

BY:

Anne C Taylor
ANNE C TAYLOR
DEPUTY PUBLIC DEFENDER

MOTION FOR AN INTERLOCUTORY APPEAL

Page - 1 -

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same in the interoffice mailbox on the 9th day of February, 2006, addressed to:

----- Kootenai County Prosecutor -----

Denise Cox

Session: Hosack021706P
Session Date: 2006/02/17
Judge: Hosack, Charles
Reporter: Schaller, Joann

Division: DIST
Session Time: 08:09

Courtroom: Courtroom9

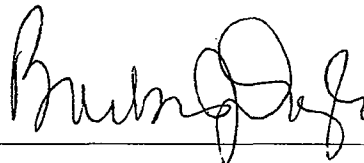
Clerk(s):
Douglas, Barbara

State Attorney(s):

Public Defender(s):

Prob. Officer(s):

Court interpreter(s):



Case ID: 0005

Case number: CR2005-403

Plaintiff:

Plaintiff Attorney:

Defendant: Gosch, Kirk J

Co-Defendant(s):

Pers. Attorney:

State Attorney:

Public Defender:

2006/02/17

15:37:39 - Operator

Recording:

15:37:39 - New case

Gosch, Kirk J

15:37:51 - Judge: Hosack, Charles

Calls case; Art Verharen and Anne Taylor and Chris Schwartz present. HERE

15:38:50 - Judge: Hosack, Charles

ON MOTIONS.

15:38:53 - Add Ins: Taylor, Anne

I thought I included my PTSO with my motion to enforce plea agreement - clerk

15:39:06 - Add Ins: Taylor, Anne

advised I did not.

15:39:09 - Judge: Hosack, Charles

Couldn't find it in court file. Appreciate the copy.

15:41:20 - Judge: Hosack, Charles

Mark PTSO as Exhibit "A". That is attachment to Motion to Enforce Plea

15:41:48 - Judge: Hosack, Charles

Agreement. Then we have MOTION FOR INTERLOCUTORY APPEAL.

15:42:10 - Add Ins: Taylor, Anne
Take Mot/Enforce Plea - I'll call Terry Morgan

15:42:41 - Other: DXW1, TERRY MORGAN
State Police Detective - for ISP for 18 plus years. Working in Kootenai

15:43:10 - Other: DXW1, TERRY MORGAN
County for year begin January 2005; Investigate drug activity/primary duty;

15:43:34 - Other: DXW1, TERRY MORGAN
recall; Kirk Gosch - he was arrested by agency. I requested A. Taylor be

15:44:02 - Other: DXW1, TERRY MORGAN
assigned to case. On date of arrest, I contacted Gosh re working for me.

15:44:23 - Other: DXW1, TERRY MORGAN
Met with Gosch and DA at jail shortly after arrest - Jan 2005; Erick

15:44:43 - Other: DXW1, TERRY MORGAN
Clemenson of FBI was also present at meeting, believe Beth Bradbury was also

15:44:55 - Other: DXW1, TERRY MORGAN
present. Recall topic - drug trade between Canada and US, local traffickers

15:45:19 - Other: DXW1, TERRY MORGAN
and dealers. Agreement was to help gosch get his bail reduced to \$10,000 -

15:45:37 - Other: DXW1, TERRY MORGAN
that was done. Gosch got his jeep back; Kirk eventually signed the money over

15:46:15 - Other: DXW1, TERRY MORGAN
to the State. I don't recall if he said money was or wasn't his - he didn't

15:46:41 - Other: DXW1, TERRY MORGAN
want anything to do with the money - approx \$5,000. After def released from

15:46:59 - Other: DXW1, TERRY MORGAN
jail, I met with him again. Met in jail a couple of times. I think we got

15:47:38 - Other: DXW1, TERRY MORGAN
def out of jail fairly quick. Believe PD was present during most of initial

15:48:02 - Other: DXW1, TERRY MORGAN
meetings - after that law enforcement and Kirk met. Initial meetings with PD,

15:48:16 - Other: DXW1, TERRY MORGAN
Kirk and myself - tried to explain what we wanted, who he knew, he was to buy

15:48:30 - Other: DXW1, TERRY MORGAN
from major suppliers - our procedures. Making several buys were part of that

15:48:53 - Other: DXW1, TERRY MORGAN
deal. Brain dump was included with the buys. We needed information re how

15:49:21 - Other: DXW1, TERRY MORGAN
maiij was coming across the Canada border. I recall asking Kirk to disclose

15:49:35 - Other: DXW1, TERRY MORGAN
his buyer. I discussed this with the prosecutor. EX A/in court's file

15:50:00 - Other: DXW1, TERRY MORGAN
reviewed by witness. Nothing re making buys on this plea agreement. Th

15:52:12 - Other: DXW1, TERRY MORGAN
e plea agreement between myself and you were he buyers - you and I discussed

15:52:35 - Other: DXW1, TERRY MORGAN
and agreed it should not be in writing. Too many variables to put anything

15:53:06 - Other: DXW1, TERRY MORGAN
in writing. You told me that you trusted me to be with Kirk to do these -

15:53:30 - Other: DXW1, TERRY MORGAN
Written plea agreement from State doesn't include making buy. Conversation

15:53:43 - Other: DXW1, TERRY MORGAN

between me and PD is not recorded. I think Erik Clemenson was present during
15:53:56 - Other: DXW1, TERRY MORGAN
several meetings - don't know if he was at this one.
15:54:14 - Other: DXW1, TERRY MORGAN
Recall meeting with myself, Ann Taylor, Kirk, officers from Kalispell, FBI,
15:54:47 - Other: DXW1, TERRY MORGAN
other agencies. Don't agree that meeting was to be Ann and Kirk and myself
15:55:13 - Other: DXW1, TERRY MORGAN
only.
15:55:16 - Add Ins: Verharen, Art
Objection - witness is to be allowed to answer
15:55:23 - Judge: Hosack, Charles
proceed with questions and answers
15:55:34 - Other: Morgan, Terry
It was up front that there was to be other law enforcement agents present.
15:56:00 - Other: Morgan, Terry
There was 2 from Montana, one from Here, one from FBI and one other detective
15:56:13 - Other: Morgan, Terry
from my office. Meeting was not recorded by me. Kirk was cooperative for
15:56:42 - Other: Morgan, Terry
part I sat in on.
15:57:01 - Other: DXW1, Terry Morgan
Forest Service and Customs people had maps - he was explaining the area.
15:57:57 - Other: DXW1, Terry Morgan
This was Feb 2005.
15:58:05 - Add Ins: Verharen, Art
leading
15:58:13 - Other: DXW1, Terry Morgan
Don't think customs met with him any more - believe other meetings was with
15:58:26 - Other: DXW1, Terry Morgan
FBI agent and myself. I and Det. Berger met with def - I kept no notes,
15:59:10 - Other: DXW1, Terry Morgan
case logs with Kirk. I probably participated with Kirk in meetings 7-8.
15:59:56 - Other: DXW1, Terry Morgan
October 2005 - recall pc with Anne Taylor over phone. I said kirk was back
16:00:40 - Other: DXW1, Terry Morgan
buner case - we had alot other things going on. During Oct/Nov 2005, Kirk
16:01:03 - Other: DXW1, Terry Morgan
could have had contact with me. Kirk, Me and Paul Berger went to Spokane to
16:01:30 - Other: DXW1, Terry Morgan
look for supplier. He showed me where he thought his supplier lived. He
16:01:52 - Other: DXW1, Terry Morgan
assisted with car descriptions. There was times Kirk contacted me that he
16:02:32 - Other: DXW1, Terry Morgan
may have had something going - he made phone calls he had name, or someone he
16:03:00 - Other: DXW1, Terry Morgan
could buy from. Kirk offered to buy from supplier in Spokane. Never asked
16:03:39 - Other: DXW1, Terry Morgan
Kirk to get a sample. Kirk had reason to contact me. Kirk attempted to set
16:04:21 - Other: DXW1, Terry Morgan
up something. Kirk provided us with minimal information re drug trade in

16:04:47 - Other: DXW1, Terry Morgan
this area. He provided us with accurate information - most we already knew.

16:05:06 - Other: DXW1, Terry Morgan
He provided info re how marij came across the border.

16:06:37 - Other: DXW1, Terry Morgan
Can't est. # phone calls between me and kirk over the last year. Describes

16:07:39 - Other: DXW1, Terry Morgan
contact between Morgan and Kirk gosch.

16:08:51 - Add Ins: Verharen, Art
CX W1

16:09:04 - Other: CXW1, Terry Morgan
Understood def was substantial drug dealer

16:09:15 - Add Ins: Taylor, Anne
object

16:09:18 - Judge: Hosack, Charles
override

16:09:27 - Other: CXw1, Terry Morgan
understood def was moving marij across border _trafficking in cocaine;

16:09:45 - Other: CXw1, Terry Morgan
thought we might be able to work with him to get to bigger person on scale.

16:10:30 - Other: CXw1, Terry Morgan
Found def to be evasive - he was protective of certain people and sources of

16:10:40 - Other: CXw1, Terry Morgan
supplies - explains details.

16:11:52 - Add Ins: Taylor, Anne
speculation/lack foundation

16:11:57 - Judge: Hosack, Charles
override

16:12:03 - Other: CXW1, Terry Morgan
Believe def was withholding information. The farther along this went, June

16:12:24 - Other: CXW1, Terry Morgan
or July, I met with Kirk Gosch at Circle K -I was trying to get him more

16:12:57 - Other: CXW1, Terry Morgan
comfortable - we discussed him wearing a wire - he felt we could got buy from

16:13:24 - Other: CXW1, Terry Morgan
one drug dealer and sell it to him and then get our money back. I told him

16:13:34 - Other: CXW1, Terry Morgan
we needed recording conversations prior, we had to search him, we'd give him

16:13:45 - Other: CXW1, Terry Morgan
money, etc. He didn't know our procedures - little by little we got to know

16:14:07 - Other: CXW1, Terry Morgan
each other better. I tried to find out who the supplier in Canada was. He

16:15:16 - Other: CXW1, Terry Morgan
wouldn't give us that information specifically. He was evading that. He

16:15:50 - Other: CXW1, Terry Morgan
never introduced us to his Canada supplier.

16:16:00 - Other: CXW1, Terry Morgan
re meeting in my office - custom's officers -

16:16:13 - Add Ins: Taylor, Anne
speculation

16:16:17 - Judge: Hosack, Charles

lay foundation re knowledge
16:16:37 - Other: CXw1, Terry Morgan
My discussion with Ms. Taylor prior to the custom's meeting, was that it
16:16:49 - Other: CXw1, Terry Morgan
wasn't comfortable for him to be in room with alot people. Gosch's mother was
16:17:02 - Other: CXw1, Terry Morgan
objection - move to strike - irrelevant
16:17:14 - Judge: Hosack, Charles
won't give weight to it - strike/non responsive
16:17:29 - Other: CXw1, Terry Morgan
Debriefing - information given was not satisfactory. After meeting, custom's
16:17:50 - Other: CXw1, Terry Morgan
people talked to me about meeting - felt they didn't get any new information.
16:18:04 - Other: CXw1, Terry Morgan
They tried to get def to testify against Matt Brown - not satisfied with
16:18:17 - Other: CXw1, Terry Morgan
answers given; Nov-Dec activities in Spokane-marijuana supplier. Gosch
16:18:51 - Other: CXw1, Terry Morgan
never introduced us to marij supplier in spokane. Last pc with Kirk was 1-2
16:19:16 - Other: CXw1, Terry Morgan
days after Berger and I traveled to Spokane and identified the source and
16:19:26 - Other: CXw1, Terry Morgan
supply he said he had been dealing with - kirk contacted the person - he said
16:19:52 - Other: CXw1, Terry Morgan
he accomplished that and had a buy set up - I told him I needed lead time to
16:20:04 - Other: CXw1, Terry Morgan
get in touch with spokane - I said 24 hrs would be nice - kirk told me he had
16:20:26 - Other: CXw1, Terry Morgan
met someone new that eve/in CDA - supplier who was able to supply in 10 lb
16:20:44 - Other: CXw1, Terry Morgan
range. He said he was all done working with us - he said he wasn't going to
16:21:52 - Other: CXw1, Terry Morgan
buy from another person. He just wanted to play ball. I then called PA's
16:22:07 - Other: CXw1, Terry Morgan
office and explained - then I called Anne explained and met with her.
16:22:20 - Other: CXw1, Terry Morgan
Wasn't able to resolve situation. Def never introduced us to one of his
16:22:37 - Other: CXw1, Terry Morgan
suppliers at end of relationship. Def did not submit to full law enforcement
16:23:05 - Other: CXw1, Terry Morgan
debriefing - he was not fully truthful - keeping some back. We never met any
16:23:27 - Other: CXw1, Terry Morgan
suppliers, he never wore wire, never bought drugs.
16:24:04 - Add Ins: Taylor, Anne
RDX W1
16:24:13 - Other: RDXW1, Terry Morgan
Kirk's case went from front burner to back burner several times. I told Ann
16:24:44 - Other: RDXW1, Terry Morgan
I didn't think Kirk could accomplish what we asked. You said you thought you
16:25:17 - Other: RDXW1, Terry Morgan
believed he had some condition. You said he never trusted law enforcement in

16:25:50 - Other: RDXW1, Terry Morgan
general. I reiterated to Art what Kirk had told me then I called you. You

16:27:02 - Other: RDXW1, Terry Morgan
and I discussed the people that Kirk could buy dope from - it all depended on

16:27:18 - Other: RDXW1, Terry Morgan
who he was buying dope from. Kirk would get credit for eaach step up.

16:28:13 - Add Ins: Taylor, Anne
asked and answered

16:28:21 - Add Ins: Verharen, Art
No RCX

16:28:28 - Judge: Hosack, Charles
excuses W1

16:28:35 - Add Ins: Taylor, Anne
Calls W2

16:29:06 - Other: DXW2, Paul Berger
Det ISP Investigations Division. Approx 7 yrs with ISP as Detective. Came

16:29:36 - Other: DXW2, Paul Berger
into contact with Kirk Gosch. I participated in 1 debriefing with several

16:29:49 - Other: DXW2, Paul Berger
people and Kirk Gosch. ICE, Forest Service and others. I was only at

16:30:11 - Other: DXW2, Paul Berger
meeting for short time. Kirk was cooperative - he supplied some information

16:30:24 - Other: DXW2, Paul Berger
at meeting. I met with Kirk 2x over the last year. We went to Spokane once

16:31:24 - Other: DXW2, Paul Berger
- to identify a marij supplier. I was involved with Gosch on whole separate

16:31:40 - Other: DXW2, Paul Berger
person. Gosch gave me a little information and that was it - information on a

16:32:04 - Other: DXW2, Paul Berger
person of interest - he knew the person - Kirk stated he didn't want to help

16:32:25 - Other: DXW2, Paul Berger
us with that person - our last meeting - Spokane trip.

16:33:01 - Add Ins: Verharen, Art
CXW2

16:33:12 - Add Ins: Taylor, Anne
speculation

16:33:14 - Judge: Hosack, Charles
sustain as to form

16:33:23 - Other: CXW2, Paul Berger
Kirk stated he didn't want to do anything else for us - didn't do anything

16:33:36 - Other: CXW2, Paul Berger
for us at all.

16:33:39 - Add Ins: Taylor, Anne
RDX

16:33:51 - Other: RDXw2, Paul Berger
Kirk was assigned to Morgan.

16:34:01 - Judge: Hosack, Charles
Excuses W2

16:34:10 - Add Ins: Taylor, Anne
Calls W3 - Beth Bradbury

16:34:19 - Other: clerk

swears W3

16:34:49 - Other: DXW3, Elizabeth Bradbury
ISP Investigations Region 1 CDA - Detective since 1990. Met Kirk in 2005 -

16:35:33 - Other: DXW3, Elizabeth Bradbury
Kirk wasn't assigned to me. Had contact with Kirk in jail 1st time - I

16:35:54 - Other: DXW3, Elizabeth Bradbury
wanted to see if he had knowledge of suspects involved in my case. He came

16:36:10 - Other: DXW3, Elizabeth Bradbury
down and was unable to help me. Mid to late Sept 2005. At jail meeting,

16:36:42 - Other: DXW3, Elizabeth Bradbury
wanted to listen to see if any names mentioned by Gosch were involved in my

16:36:52 - Other: DXW3, Elizabeth Bradbury
case. No information helped me at that time. Heard Gosch give information -

16:37:19 - Other: DXW3, Elizabeth Bradbury
scared.

16:37:24 - Add Ins: Verharen, Art
speculation

16:37:27 - Add Ins: Taylor, Anne
her opinion

16:37:29 - Judge: Hosack, Charles
overrule

16:37:41 - Other: DXW3, Elizabeth Bradbury
I vaguely recall communication problems between Terry Morgan, gosch and A

16:38:13 - Other: DXW3, Elizabeth Bradbury
Taylor. I believe there was talk about connecting - my opinion there was

16:38:56 - Other: DXW3, Elizabeth Bradbury
leaning disability. Kirk came in in Sept/willing to try to give information

16:39:11 - Add Ins: Verharen, Art
CXW3

16:39:22 - Other: CXW3, Elizabeth Bradbury
Kirk provided no assistance to me

16:39:34 - Add Ins: Taylor, Anne
Calls W4 - Eric Clemenson

16:39:41 - Other: clerk
swears W4

16:40:07 - Other: DXW4, Eric Clemenson
FBI in CDA since 1997. Work in drug enforcement and other activities. Met

16:40:29 - Other: DXW4, Eric Clemenson
Kirk first in mid January 2005. Serve SW at Gosch's residence with Terry

16:40:49 - Other: DXW4, Eric Clemenson
Morgan. Met Kirk at jail. Met Kirk on other occasions - prob 3-4 x. I was

16:41:26 - Other: DXW4, Eric Clemenson
aware of gen'l agreement - Kirk would work as CI and provide narcotics

16:41:39 - Other: DXW4, Eric Clemenson
information and make controlled purchases record phone calls associated

16:41:51 - Other: DXW4, Eric Clemenson
with setting up purchases. I made aware of this thru gen'l discussions with

16:42:03 - Other: DXW4, Eric Clemenson
Morgan, Ms. Taylor and A. Verharen. Recall conversation re brain dump.

16:42:39 - Other: DXW4, Eric Clemenson
Significant part was cocaine trafficking and dhow marij came across US

16:42:48 - Other: DXW4, Eric Clemenson
border. Kirk reluctant to wear a wire. Recall option being discussed - re
16:43:15 - Other: DXW4, Eric Clemenson
wire wearing - that is no longer an option. That is not the way I operate.
16:43:35 - Other: DXW4, Eric Clemenson
I want to try and keep all options open - I use the tool that best suits the
16:43:47 - Other: DXW4, Eric Clemenson
operation. Brain dump, introduction of suppliers were part of meeting.
16:44:12 - Other: DXW4, Eric Clemenson
Frank Nova - Kalispell Montana - Ben Donohoe. Recall meeting at T. Morgan's
16:44:30 - Other: DXW4, Eric Clemenson
office - Feb 18, 2005 - me, Det Morgan, Det Berger, A Taylor, Noble, Donohue
16:44:58 - Other: DXW4, Eric Clemenson
and M. Monzana with US Forest Service were present. Recall Kirk giving
16:45:18 - Other: DXW4, Eric Clemenson
information re drug trade across border - Kirk was scared - recall law
16:45:31 - Other: DXW4, Eric Clemenson
enforcement participants reassuring him that there would be no double cross -
16:45:50 - Other: DXW4, Eric Clemenson
I made those assurances and several others made those assurances to Kirk.
16:46:09 - Other: DXW4, Eric Clemenson
Recall Ann personally having meeting outside office - Kirk returned - was
16:46:33 - Other: DXW4, Eric Clemenson
very skiddish - we made reassurances. Don't recall A Taylor and Kirk being
16:47:05 - Other: DXW4, Eric Clemenson
surprised of number of persons present. Since Feb 2005, in mid March 2005, I
16:47:21 - Other: DXW4, Eric Clemenson
documented Kirk as form of CI with FBI - cooperating witness, due to
16:47:38 - Other: DXW4, Eric Clemenson
expectation he would make purchases, introductions, participate in monitored
16:47:47 - Other: DXW4, Eric Clemenson
phone calls, meetings with traffickers. Explains CI as opposed to
16:48:27 - Other: DXW4, Eric Clemenson
cooperating witness status. I believe Morgan and I and Kirk were present at
16:48:44 - Other: DXW4, Eric Clemenson
that meeting. At next contact, nothing happened - no docs re transactions,
16:49:00 - Other: DXW4, Eric Clemenson
calls, introductions, etc. Det Morgan was co-case agent with FBI.
16:50:44 - Other: DXW4, Eric Clemenson
Don't recall phone calls with Kirk - Det Morgan took lead role in contact
16:51:00 - Other: DXW4, Eric Clemenson
with Gosch. I was FBI case agent in Groene case. At 3 mo. period between
16:51:41 - Other: DXW4, Eric Clemenson
meetings with Gosch May 17 when Groene kids were abducted - during that
16:51:56 - Other: DXW4, Eric Clemenson
time Gosch was non-productive. I think Morgan went over and above what I
16:52:10 - Other: DXW4, Eric Clemenson
would have done to get Kirk productive. He was much more patient than I
16:52:28 - Other: DXW4, Eric Clemenson
would have been. Kirk was extremely difficult to work with. Morgan updated
16:53:37 - Other: DXW4, Eric Clemenson

me on a periodic basis - I recall Morgan could not get Kirk fulfill the

16:53:57 - Other: DXW4, Eric Clemenson
claims he said he could do. The overall theme was Kirk not fulfilling his

16:54:17 - Other: DXW4, Eric Clemenson
end of the bargain. There was several individuals mentioned during

16:54:33 - Other: DXW4, Eric Clemenson
debriefing. Becuz of difficulties in communicating, I took stance I wasnt

16:55:30 - Other: DXW4, Eric Clemenson
going to babysit him.

16:55:54 - Add Ins: Verharen, Art
CXW4

16:56:08 - Other: DXW4, Eric Clemenson
familiar with plea agreement - def did not fulfill the requirements. Gosch

16:56:49 - Other: DXW4, Eric Clemenson
became a cooperating witness for FBI - March 16, 2005 until Sept 1, 2005. .

16:57:14 - Other: DXW4, Eric Clemenson
Notes in that file would be investigative reports, notes, reports re

16:57:33 - Other: DXW4, Eric Clemenson
purchases, phone calls, accounting sheets to doc statistical accomplishments

16:57:51 - Other: DXW4, Eric Clemenson
of that witness. Nothing in Gosch's file. I requested file be closed on

16:58:25 - Other: DXW4, Eric Clemenson
August 31, 2005, and the file was closed on Sept 1, 2005 -

16:58:42 - Add Ins: Taylor, Anne
objection relevance

16:58:46 - Judge: Hosack, Charles
overrule

16:58:53 - Other: CXW4, Eric Clemenson
file closed becuz of non productivity and at that point I was 3 months away

16:59:06 - Other: CXW4, Eric Clemenson
from overseas assignment - if anything further done by Gosch, Morgan would

16:59:26 - Other: CXW4, Eric Clemenson
take over and document Gosch as ISP informant.

16:59:34 - Add Ins: Taylor, Anne
RDXW4

16:59:41 - Other: Clemenson, Eric
you can obtain copies of notes thru standard procedures. Highly unlikely you

16:59:58 - Other: Clemenson, Eric
would be able to get hold of informant file. y notes would be discoverable.

17:00:11 - Judge: Hosack, Charles
Excuses W4

17:00:25 - Add Ins: Verharen, Art
No witnesses

17:00:32 - Add Ins: Taylor, Anne
Plea agreement required def to submit to debriefing re knowledge of drug

17:00:48 - Add Ins: Taylor, Anne
trafficking and make introductions. Relationship lasted almost 1 year. Face

17:01:01 - Add Ins: Taylor, Anne
of plea agreement doesn't require any buys of def. Introduction of suppliers

17:01:20 - Add Ins: Taylor, Anne
was attempted at a late stage. Communication broke down at the end when we

17:01:42 - Add Ins: Taylor, Anne
were told there had to be a certain quantity or further bust. That changed

17:01:53 - Add Ins: Taylor, Anne
the game. We ask court to enforce this offer and the things kirk did to

17:02:06 - Add Ins: Taylor, Anne
attempt to assist law enforcement. Kirk tried to be cooperative. Anybody

17:02:22 - Add Ins: Taylor, Anne
facing these charges would be terrified.

17:02:50 - Add Ins: Verharen, Art
Look at agreement in procedural aspect. It had expiration date of 3/15/05.

17:03:21 - Add Ins: Verharen, Art
Plea agreement no longer in effect becuz of body where it says "whether def

17:03:37 - Add Ins: Verharen, Art
accomplishes either of the tasks will be decided solely by the state". It

17:03:49 - Add Ins: Verharen, Art
doesn't leave alot room for defense to argue agreement was completed. Court

17:04:13 - Add Ins: Verharen, Art
can see def was to commit to debriefing and present suppliers. Def didn't

17:04:46 - Add Ins: Verharen, Art
submit to complete debriefing - he withheld and refused to give names. He

17:04:58 - Add Ins: Verharen, Art
also did not introduce to anyone any of the suppliers. No showing at all he

17:05:18 - Add Ins: Verharen, Art
met the basic 2 aspects of the plea agreement he was supposed to. Agreement

17:05:31 - Add Ins: Verharen, Art
is non-enforceable.

17:05:49 - Add Ins: Taylor, Anne
No response -

17:06:02 - Add Ins: Taylor, Anne
Re expiration date - there was ongoing performance - this wasn't able to be

17:06:28 - Add Ins: Taylor, Anne
completed by 3/15. He accepted thru performance - it ended in Dec 2005.

17:06:44 - Judge: Hosack, Charles
Re Plea Agreement - testimony from witnesses is they con'd to work with

17:07:08 - Judge: Hosack, Charles
agreement - continuing negotiations, acts taken was not outside the scope of

17:07:21 - Judge: Hosack, Charles
the agreement. Assume law enforcment thought they had something they were

17:07:35 - Judge: Hosack, Charles
working on. Offer date not a procedural out for the date. However, the

17:07:45 - Judge: Hosack, Charles
express terms of agreement are that whatever it is Gosch was to do, he needed

17:07:54 - Judge: Hosack, Charles
to accomplish to satisfaction of State/determined solely by the State.

17:08:26 - Judge: Hosack, Charles
Nothing court could rely on to find agreement was breached. State felt there

17:08:49 - Judge: Hosack, Charles
was more information that could have been given and it wasn't given. The

17:09:08 - Judge: Hosack, Charles
term "introduction" - that never happened. Under express terms of agreement

17:09:28 - Judge: Hosack, Charles

- failure to perform. Testimony re "introduction" - it means you wear a
17:10:10 - Judge: Hosack, Charles
wire, do recorded phone call, make a buy, etc. Even if you give restricted
17:10:45 - Judge: Hosack, Charles
interpretation of "introduction", there is still no performance by defendant.
17:12:02 - Judge: Hosack, Charles
Not even an implication that alot got done and State pulled the rug out If
17:12:52 - Judge: Hosack, Charles
he didn't want to make the buys, that is understandable. The agreement set
17:13:13 - Judge: Hosack, Charles
certain things, but nothing got accomplished. DENY MOTION TO ENFORCE PLEA
17:13:36 - Judge: Hosack, Charles
AGREEMENT.
17:13:39 - Judge: Hosack, Charles
Now motion for interlocutory appeal.
17:14:02 - Operator
Stop recording: (On Recess)
17:16:12 - Operator
Recording:
17:16:12 - Record
Gosch, Kirk J
17:16:13 - Judge: Hosack, Charles
back on record
17:16:17 - Add Ins: Schwartz, Chris
move for interlocutory appeal. Orig it was filed re motion to suppress, but
17:16:30 - Add Ins: Schwartz, Chris
given court's ruling today, ask the mot denied today be included. Rule 12
17:16:47 - Add Ins: Schwartz, Chris
-discussed. We have protracted period of time def interacted with law
17:17:04 - Add Ins: Schwartz, Chris
enforcement-creates murky water. Bodell v. Todd case referred to. The
17:17:40 - Add Ins: Schwartz, Chris
intent of the rule is met. The way this case is unique re level and length
17:18:24 - Add Ins: Schwartz, Chris
of interaction between police and Gosch and fact plea agareement was entered
17:18:33 - Add Ins: Schwartz, Chris
into in back room, question of first impression. Court of appeals should
17:18:56 - Add Ins: Schwartz, Chris
have chance to decide. Ask court's permission to appeal. Outcome will
17:19:13 - Add Ins: Schwartz, Chris
affect how the case proceeds.
17:19:22 - Add Ins: Verharen, Art
Only thing uinique with mot/suppres was dog search in private driveway. Ample
17:19:40 - Add Ins: Verharen, Art
federal case law - 9th circuit case law on that issue. Not a substantial
17:20:15 - Add Ins: Verharen, Art
legal issue of great public interest.
17:20:38 - Add Ins: Verharen, Art
re plea agreement - don't know how on a factual basis you could find that
17:20:58 - Add Ins: Verharen, Art
needed to be enforced. If District Court starts granting interlocutory

17:21:10 - Add Ins: Verharen, Art
appeals following motions to suppress would start a landslide.

17:21:57 - Add Ins: Schwartz, Chris
This is question of first impression 105 Idaho 2 (1983). PA just stipulated

17:22:18 - Add Ins: Schwartz, Chris
to an interlocutory appeal.

17:22:28 - Judge: Hosack, Charles
I'm not sure whether there is a case where interlocutory appeal was heard by Ct

17:22:41 - Judge: Hosack, Charles
Appeals on mot/suppress. appellate courts in gen'l have not done anything to

17:23:11 - Judge: Hosack, Charles
lead this court that the practice of interlocutory appeal is something that

17:23:20 - Judge: Hosack, Charles
should be aggressively pursued at trial court level.

17:23:29 - Judge: Hosack, Charles
First impression - factual issue - on most basic element, was there

17:23:41 - Judge: Hosack, Charles
debriefing to satisfaction of state - uncontroverted testimony is debriefing

17:23:52 - Judge: Hosack, Charles
was not satisfactory to State. On Mot/Suppress, every case is first

17:24:23 - Judge: Hosack, Charles
impression because facts are different. I'll take a look at this - whether

17:24:59 - Judge: Hosack, Charles
there are cases where interlocutory appeals have been issued in State Idaho

17:25:14 - Judge: Hosack, Charles
on motions/suppress; and no specific ID cases on dog searches in Idaho. There

17:26:28 - Judge: Hosack, Charles
is ID case re officers found something in the back yard case said it was

17:26:51 - Judge: Hosack, Charles
part of curtilage/upheld. Here - car in driveway, residence to driveway to

17:27:15 - Judge: Hosack, Charles
house/sw for house, people putting stuff in car - that comes under ID case.

17:27:31 - Judge: Hosack, Charles
Not making any law on that.

17:28:41 - Judge: Hosack, Charles
Not proper for me to say it is up to the Court of Appeals - I can't get close

17:29:05 - Judge: Hosack, Charles
to write something to Ct Appeals that says it is my opinion -

17:29:46 - Judge: Hosack, Charles
I'LL TAKE IT UNDER ADVISEMENT AND ISSUE A WRITTEN RULING. ANTICIPATE GETTING

17:29:57 - Judge: Hosack, Charles
IT OUT NEXT WEEK.

17:30:03 - Add Ins: Verharen, Art
trial

17:30:17 - Add Ins: Taylor, Anne
On a to-follow basis next week.

17:30:23 - Judge: Hosack, Charles
I did tell Mr Chapman that he was number 1. Is it still a 4 day trial?

17:31:00 - Add Ins: Verharen, Art
Probably 3 - I wouldn't have an objection to bumping it into March - have to

17:31:18 - Add Ins: Verharen, Art

bring in a fingerprint person

17:31:25 - Add Ins: Taylor, Anne

Makes more sense to set it in March.

17:31:33 - Judge: Hosack, Charles

CONTINUE JURY TRIAL - 4 DAYS ON MARCH 13, 2006; PRETRIAL AT 3 PM ON MARCH 9.

17:32:03 - Judge: Hosack, Charles

I do have both weeks in March - 13th and 20th - to try cases.

17:32:51 - Operator

Stop recording:

STATE OF IDAHO } SS
COUNTY OF KOOTENAI }
FILED: 2-27-06
AT 11:10 O'CLOCK A M
CLERK, DISTRICT COURT
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,

Plaintiff,

vs.

KIRK GOSCH,

Defendant.

CR
Case No. ~~CV~~-05-403

ORDER DENYING DEFENDANT'S
MOTION FOR INTERLOCUTORY
APPEAL

Before the Court is Defendant Kirk Gosch's Motion for Interlocutory Appeal. Defendant moves for an interlocutory appeal of two of this Court's orders: 1) the order denying Defendant's motion to suppress, and 2) the order denying Defendant's motion to enforce the plea agreement. The Court heard oral argument on Defendant's motion on February 17, 2006. At the conclusion of the hearing, the Court took the matter under advisement to be ruled on within the 14-day time period provided in Appellate Rule 12(b).

Appellate Rule 12 provides the mechanism by which a party may seek an appeal of an interlocutory order of a district court. The party must first seek permission to appeal from the district court, then seek acceptance of the appeal from the Supreme Court. I.A.R. 12(b) and (c). Permission may be granted where the order in question involves a "controlling question of law as to which there is substantial grounds for difference of opinion and in which an immediate appeal

from the order may materially advance the orderly resolution of the litigation.” I.A.R. 12(a). As the Supreme Court explained in Budell v. Todd, 105 Idaho 2, 665 P.2d 701 (1983), “It was the intent of I.A.R. 12 to provide an immediate appeal from an interlocutory order if substantial legal issues of great public interest or legal questions of first impression are involved.” Budell, at 4, 665 P.2d at 703. The Budell Court further explained:

The [Supreme] Court also considers such factors as the impact of an immediate appeal upon the parties, the effect of the delay of the proceedings in the district court pending the appeal, the likelihood or possibility of a second appeal after judgment is finally entered by the district court, and the case workload of the appellate courts. No single factor is controlling in the Court's decision of acceptance or rejection of an appeal by certification, but the Court intends by Rule 12 to create an appeal in the exceptional case and does not intend by the rule to broaden the appeals which may be taken as a matter of right under I.A.R. 11.

Id.

Defendant asserts that his motion to enforce the plea agreement he entered into with the State raises an issue of first impression regarding the extent to which contract law should be applied in the context of plea agreements. This Court disagrees. The plea agreement in this case provided that Defendant was to complete two tasks. Whether or not Defendant accomplished these tasks would be a determination made “solely by the State.” (Plea Agreement, Exhibit A to Defendant’s Motion to Enforce Plea Agreement.) The testimony at the hearing was that the State did not consider Defendant to have fulfilled his end of the plea agreement. The Court’s decision to deny Defendant’s motion to enforce the agreement was thus made on purely factual grounds and involves no substantial legal issue or legal question of first impression. Accordingly, the Court denies Defendant’s request for an interlocutory appeal of the order denying Defendant’s Motion to Enforce Plea Agreement.

Defendant also asserts that his Motion to Suppress presents a question of first impression in regards to the warrantless search of Defendant’s vehicle, while his vehicle was parked in his

private driveway. While it is true that no reported cases in Idaho have ever dealt with the use of a drug detecting dog unit to inspect a vehicle parked in a private driveway, there are ample cases discussing the use of a drug detecting dog during the scope of a valid traffic stop, e.g., State v. Tucker, 132 Idaho 841, 979 P.2d 1199 (1999); Gallegos, 120 Idaho 894, 821 P.2d 949 (1991); State v. Gibson, 141 Idaho 277, 108 P.3d 424 (Ct. App. 2005), as well as the authority of the police to search without a warrant a vehicle parked in a private driveway pursuant to the automobile exception to the warrant requirement, e.g. United States v. Hatley, 15 F.3d 856 (9th Cir.1994); United States v. Markham, 844 F.2d 366 (6th Cir.1988); State v. Bottelsohn, 102 Idaho 90, 625 P.2d 1093 (1981). In addition, this Court reads State v. Sapp, 110 Idaho 153, 715 P.2d 366 (Ct. App. 1986), to support the conclusion that the police were lawfully on the premises to be searched pursuant to a search warrant when they employed the use of a drug detection dog in the Defendant's driveway. Consequently, it is this Court's determination that it has merely applied existing case law to the facts of the present case, not issued an order involving a legal question of first impression. NOW, THEREFORE,

IT IS HEREBY ORDERED, AND THIS DOES ORDER, that Defendant's Motion for Interlocutory Appeal is denied.

Dated this 24 day of February, 2006.


The Honorable Charles W. Hosack, District Judge

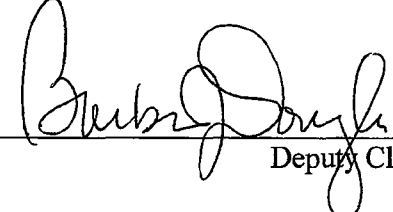
CERTIFICATE OF DELIVERY / MAILING

On this 27 day of February, 2006, a true and correct copy of the foregoing was mailed in the U.S. Mail, postage prepaid, sent via facsimile, or sent via interoffice mail as indicated below to the following counsel:

Kootenai County Prosecutor's Office
Art Verharen

Kootenai County Public Defender's Office
Anne Taylor

DANIEL ENGLISH
CLERK OF THE DISTRICT COURT


Deputy Clerk

ORIGINAL

Anne C. Taylor, Deputy Public Defender
Office of the Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83814
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 5836

STATE OF IDAHO }
COUNTY OF KOOTENAI } ss
FILED:

2006 MAR -6 PM 3: 09

CLERK DISTRICT COURT

[Signature]
DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,)

Plaintiff,)

V.)

KIRK J. GOSCH,)

Defendant.)

CASE NUMBER CR-05-0000403
Fel

MOTION TO COMPEL DISCOVERY

COMES NOW, the above named defendant, by and through his attorney, Anne C Taylor, Deputy Public Defender, and pursuant to Idaho Criminal Rule 16(e)(2) hereby moves the Court to order the State to comply with Defendant's Request for Discovery filed herein on or about January 9th, 2006, Defense requested any and all investigation notes and reports from I.S.P and the F.B.I. post arrest and any and all plea bargains between the State and the Co-Defendant; and further moves the Court for sanctions.

DATED this 6th day of March, 2006.

OFFICE OF THE KOOTENAI
COUNTY PUBLIC DEFENDER

BY:

[Signature]
ANNE C TAYLOR
DEPUTY PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same in the interoffice mailbox on the 10th day of March, 2006, addressed to:

Kootenai County Prosecutor



Anne C. Taylor, Deputy Public Defender
Office of the Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83814
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 5836

STATE OF IDAHO }
COUNTY OF KOOTENAI }

FILED: 3-20-06
AT _____ O'CLOCK _____ M

CLERK, DISTRICT COURT
Charmaine Mollett
DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,)

Plaintiff,)

V.)

KIRK J. GOSCH,)

Defendant.)

CASE NUMBER CR-05-0000403
Fel

MOTION TO CONTINUE HEARING

COMES NOW, the above named defendant, by and through his attorney, Anne C Taylor,
Deputy Public Defender and hereby moves the Court for an Order continuing the hearing now set
for March 20th through March 24th, 2006.

This motion is made on the grounds that Defense Counsel has pending motions before the
Court and additional witnesses that are necessary for Trial need to be located.

DATED this 20 day of March, 2006.

OFFICE OF THE KOOTENAI
COUNTY PUBLIC DEFENDER

BY:

Anne C Taylor
ANNE C TAYLOR
DEPUTY PUBLIC DEFENDER

"NO OBJECTION"

3/20/06

Kirk J. Gosch

MOTION TO CONTINUE HEARING

Page 1

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same in the interoffice mailbox on the _____ day of March, 2006, addressed to:

Kootenai County Prosecutor

State

Case # CR-05-403

Charge(s)

Kirk ^{VS} Gosch

Date 3-20-06 Time 2:30 Courtroom # 12

Tape # 60905 Judge Michaud

Court Reporter JoAnn Schaller

Type of Proceeding Mtn

Counsel	Party	Plaintiff	Defendant
A. Verharen	For	✓	
A. Taylor	For		✓
	For		
	For		

Identifier	Phase of Case
1125 J Calls case all present	
1200 DA have a motion to continue hearing J have a hearing in chambers Need conference phone	
1225 J back on record	
1288 DA Just disclosed some witnesses Don't have all the address for the witnesses New witnesses just came to light have motion to compel	
1334 J Why is this coming @ the eve of the trial DA Case has gone on for quite some time	
1365 J have ask for discovery Charges were dismissed on Brandon Capella he's co-defendant, can't find him, have tried for over 41 months have filed several motions have gone unnoticed or answered - get no responses Charmaine Mallett	

Pg. 1

Identifier	Phase of Case
1445 DA	back from the state Day of pretrial received letter from FBI saying they won't give me the information I have asked for I ask state if they'd stipulate to a continuance
1524	Frustrating that cases get continued @ the eve of a trial
1547 PA	Ms. Taylor told me she had add'l witnesses she needed to contact before going to trial I responded to the motion to compel have 2 page letter from FBI on an FBI Agents notes There was a confidential informant There's an ongoing investigation
1707	Will sign order for continuance May need to do some legal research On going federal investigation Hearing will remain pending for Wednesday
1803	Motion to continue granted

ORIGINAL

Anne C. Taylor, Deputy Public Defender
Office of the Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83814
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 5836

STATE OF IDAHO }
COUNTY OF KOOTENAI }

FILED: 3-20-06

AT _____ O'CLOCK _____ M

CLERK, DISTRICT COURT

Charmaine Hollett
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)

Plaintiff,)

V.)

KIRK J. GOSCH,)

Defendant.)

CASE NUMBER CR-05-0000403
Fel

ORDER TO CONTINUE HEARING

The Court having before it the Motion to Continue Hearing and good cause appearing,
now, therefore

IT IS HEREBY ORDERED that the hearing scheduled for March 20th through March
24th, 2006 is to be continued and regularly reset.

DATED this 20 day of March, 2006.

James R. Michaud
CHARLES W. HOSACK
DISTRICT JUDGE

JAMES R. MICHAUD

CLERK'S CERTIFICATE

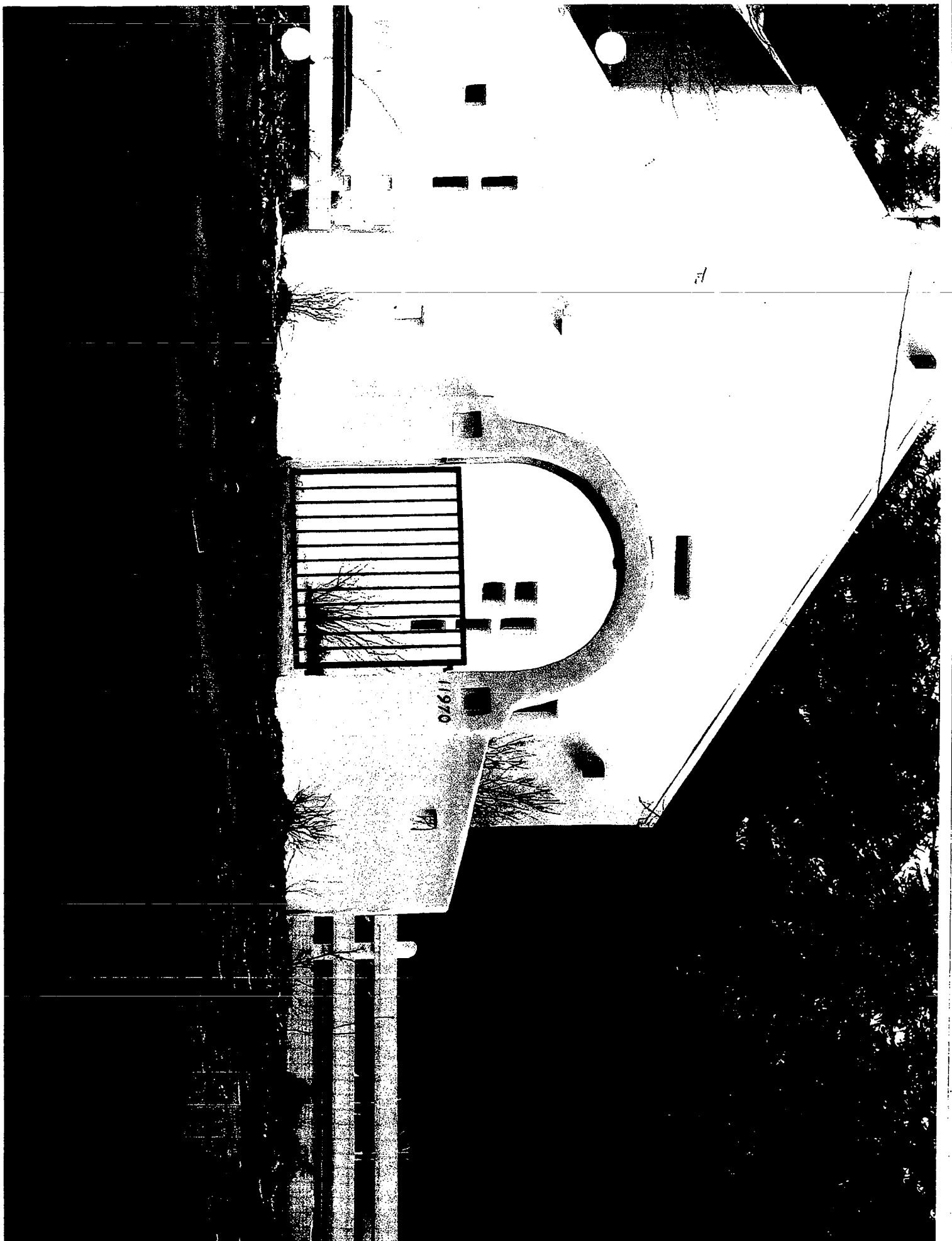
I hereby certify that a true and correct copy of the foregoing was personally served by placing a
copy of the same in the interoffice mailbox on the 20 day of March, 2006, addressed to:

Kootenai County Public Defender fax
Kootenai County Prosecutor fax

Charmaine Hollett

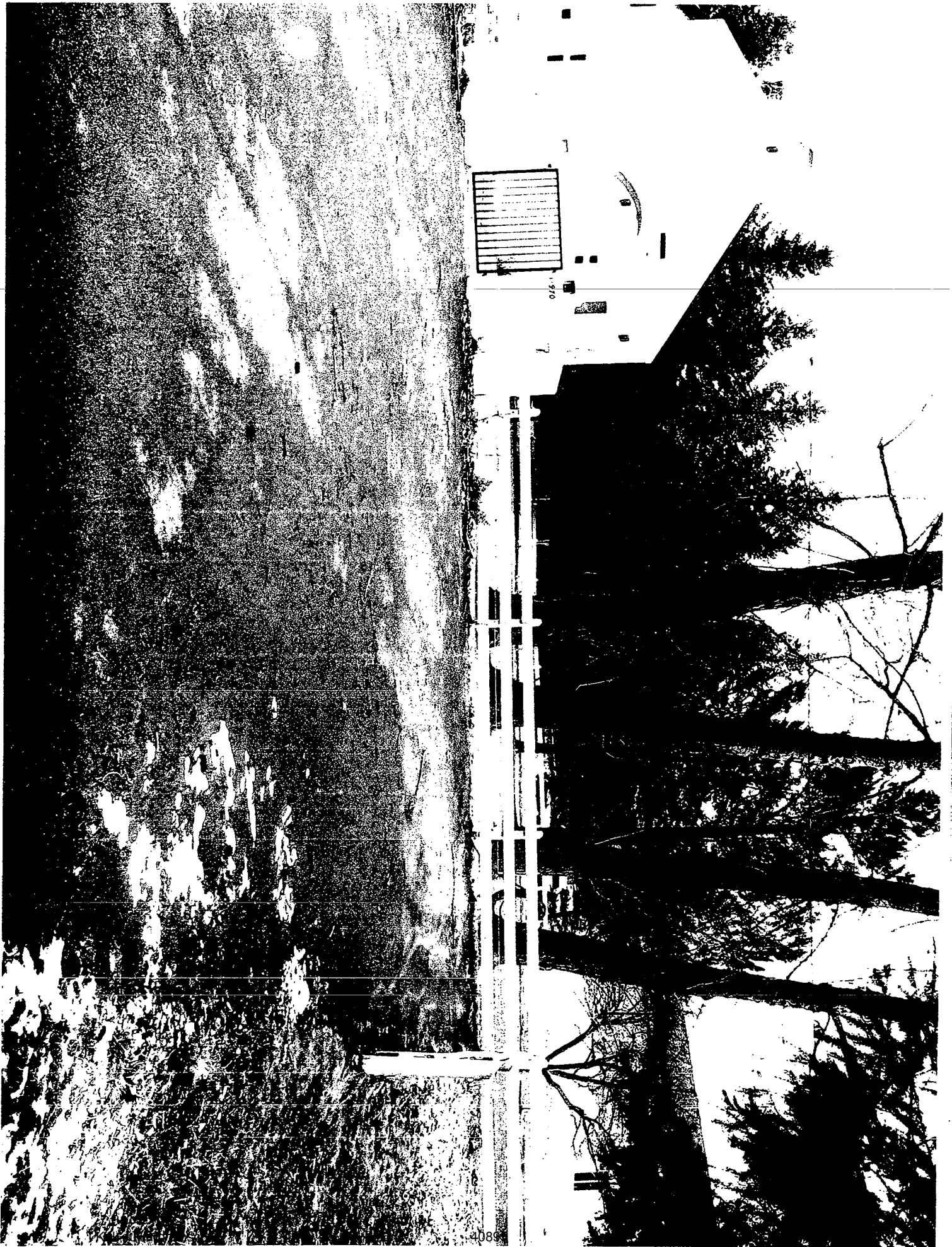
ORDER TO CONTINUE HEARING

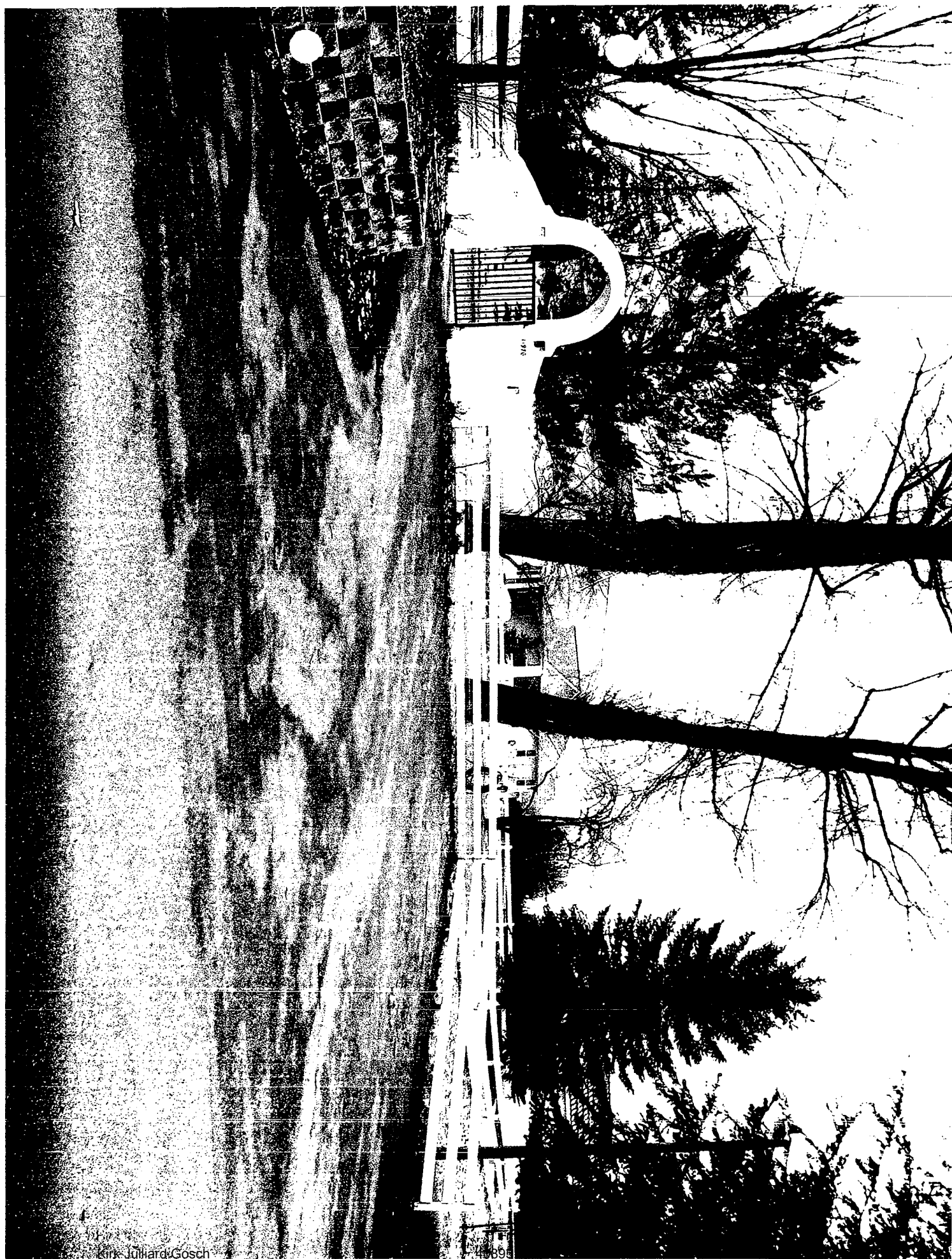
Page 1

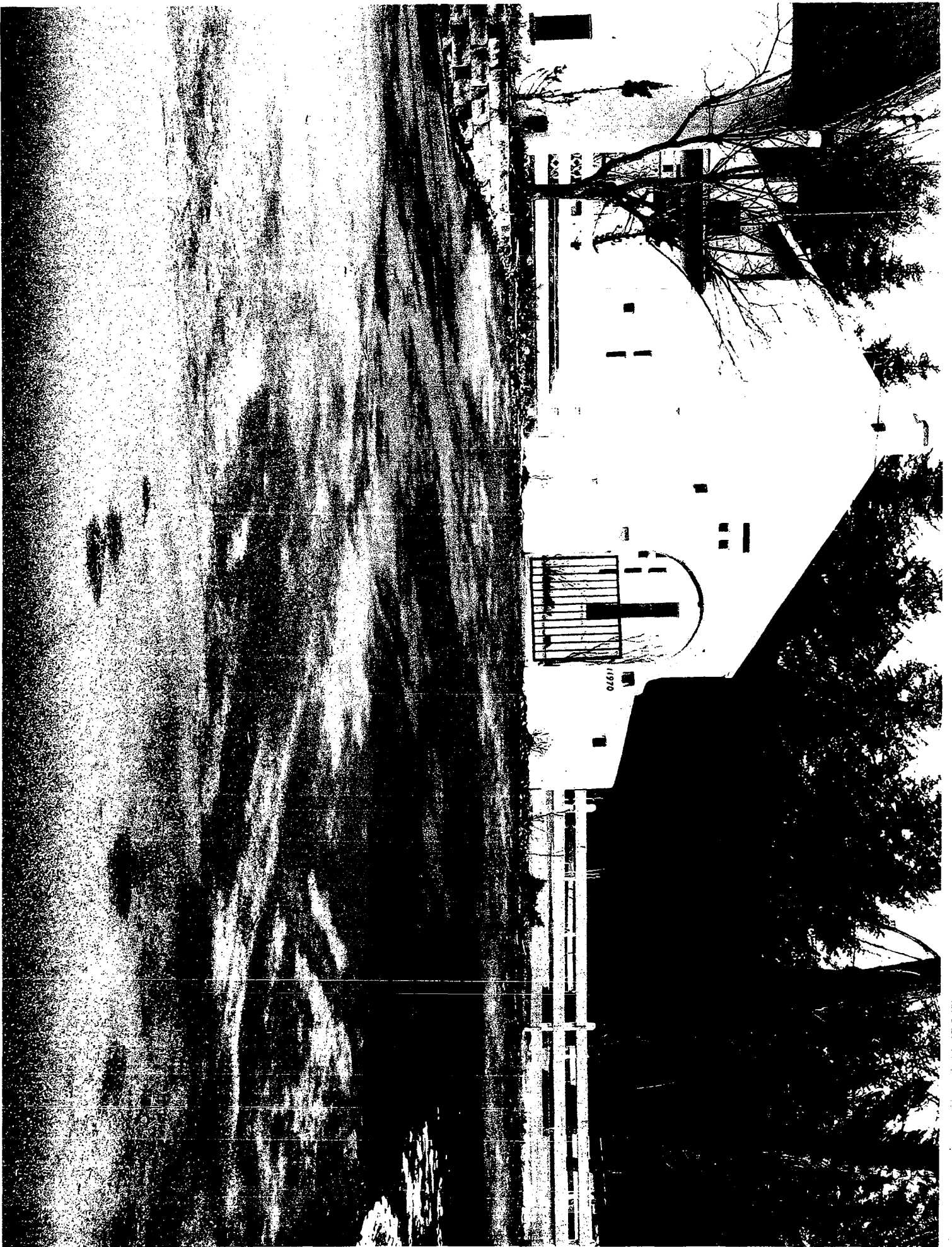






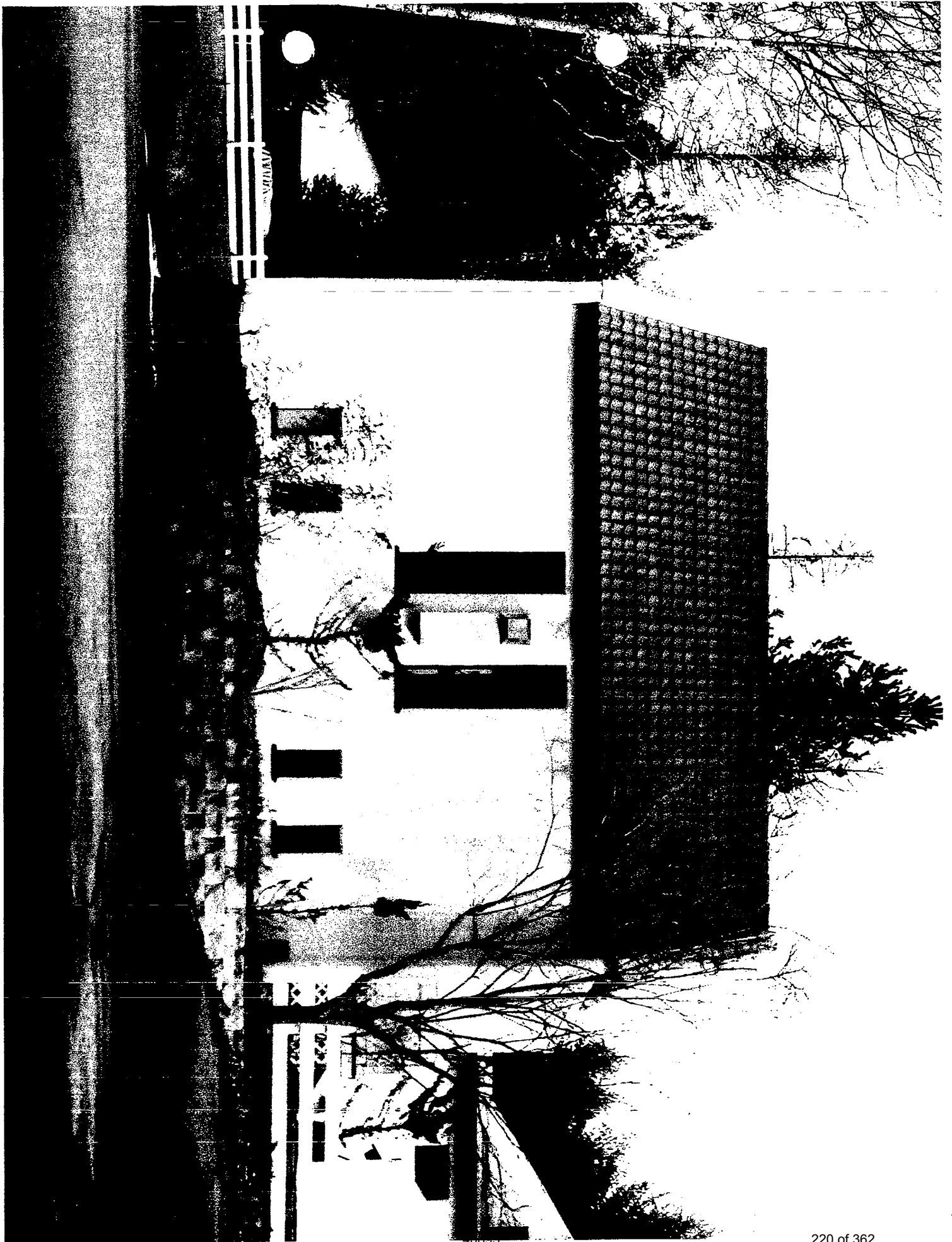


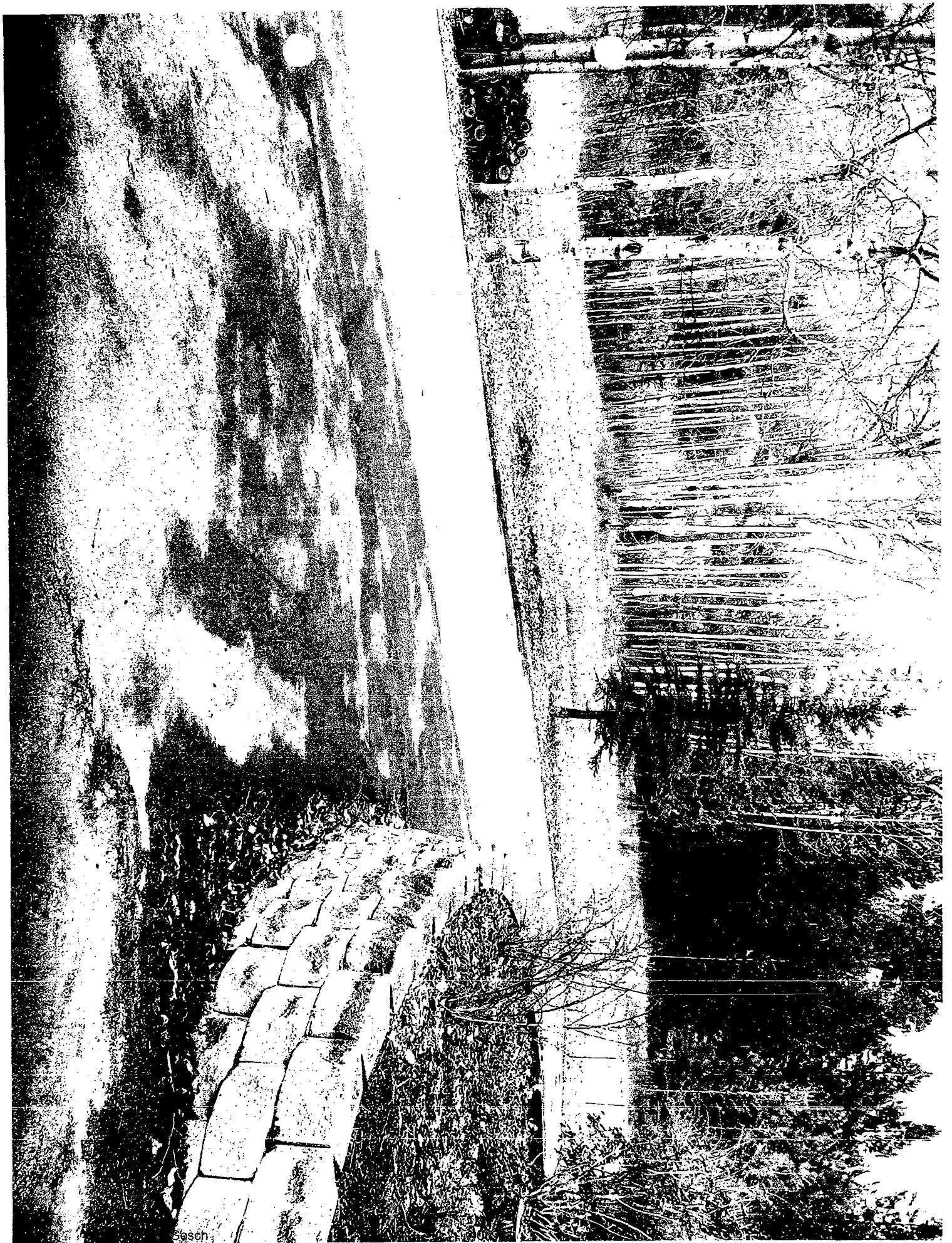






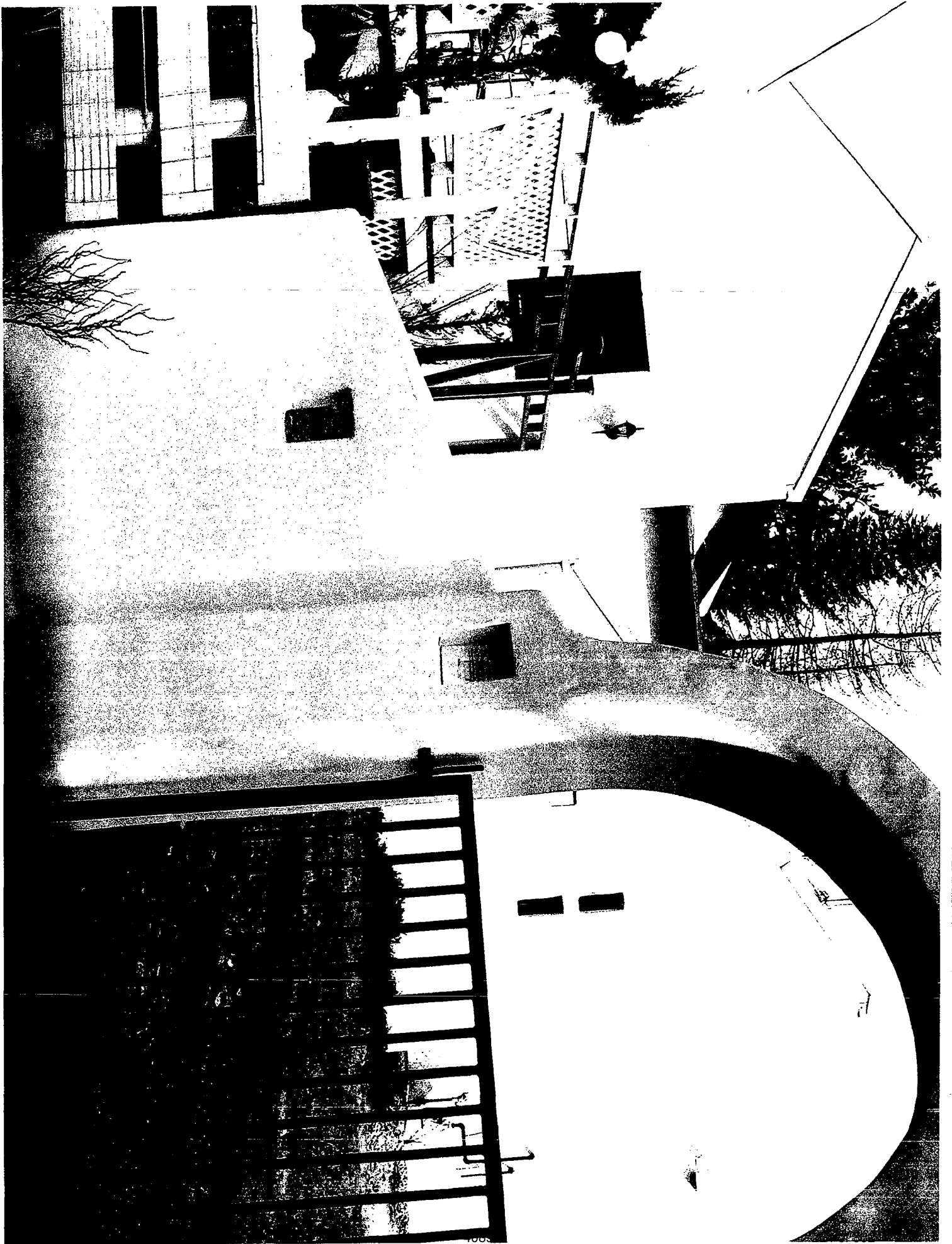
Kirk Julliard Gosch













11970



11970

Session: Hosack032206P
Session Date: 2006/03/22
Judge: Hosack, Charles
Reporter:

Division: DIST
Session Time: 03:30

Courtroom: Courtroom9

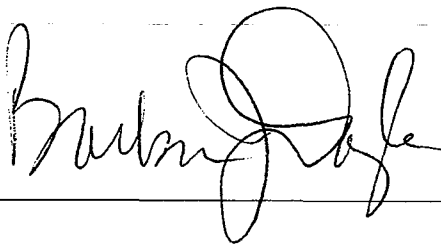
Clerk(s):
Douglas, Barbara

State Attorney(s):

Public Defender(s):

Prob. Officer(s):

Court interpreter(s):



Case ID: 0003

Case number: CR2005-403
Plaintiff:
Plaintiff Attorney:
Defendant: Gosch, Kirk J
Co-Defendant(s):
Pers. Attorney:
State Attorney:
Public Defender:

2006/03/22

16:25:07 - Operator
Recording:

16:25:07 - New case
Gosch, Kirk J

16:25:48 - Judge: Hosack, Charles
Advises counsel we have no court reporter - counsel doesnt object. Def is pre

16:26:06 - Judge: Hosack, Charles
sent. Judge Michaud did continue this case - 4 day jury trial

16:26:24 - Judge: Hosack, Charles
resheduled for April time period - 4 day JT April 10, 2006; pretrial

16:26:41 - Judge: Hosack, Charles
conference at 3pm on April 6.

16:26:48 - Judge: Hosack, Charles
HERE ON MOTION TO COMPEL OF DEF.

16:27:19 - Judge: Hosack, Charles
Notes and reports from ISP and FBI post arrest.

16:27:33 - Add Ins: Schwartz, Christopher
2 areas of discovery - notes and investigation reports re Brandon Capello.

16:27:55 - Add Ins: Schwartz, Christopher
He was co-def for small amount of time/case eventually dismissed. Rec'd no

16:28:05 - Add Ins: Schwartz, Christopher
reports of investigation or disposition of his case. He was at scene of

16:28:28 - Add Ins: Schwartz, Christopher
arrest. Culpatory evidence - not disclosed by State. No one is able to find

16:28:40 - Add Ins: Schwartz, Christopher
Mr. Capello. We need these docs to proceed with our case.

16:28:58 - Add Ins: Schwartz, Christopher
Information from FBI - (presents doc sent by FBI regarding our request for

16:29:19 - Add Ins: Schwartz, Christopher
information); FBI agent

16:29:25 - Add Ins: Verharen, Art
No objection for EX being marked - Think it is letter from FBI -

16:29:42 - Judge: Hosack, Charles
You should look at it

16:29:48 - Add Ins: Verharen, Art
no objection to it being marked as def's ex 1.

16:29:55 - Judge: Hosack, Charles
show it as def's EX 1.

16:30:16 - Add Ins: Schwartz, Christopher
FBI agent said def hadnt provided any information so not entitled to benefit

16:30:29 - Add Ins: Schwartz, Christopher
of plea agreement. Letter says he is unwilling to give notes/part of

16:30:44 - Add Ins: Schwartz, Christopher
criminal investigation ongoing. If we get this notes and it shows that def

16:31:02 - Add Ins: Schwartz, Christopher
aided FBI, we will ask court to reconsider its ruling. Bunch of people

16:31:17 - Add Ins: Schwartz, Christopher
involved with def - we havent rec'd reports of extent of their involvement.

16:31:31 - Add Ins: Schwartz, Christopher
We have rec'd no notes testified to re enforcement of plea agreement. Have

16:31:45 - Add Ins: Schwartz, Christopher
rec'd no tapes of what occurred. Def has right to know who all was invovled

16:32:06 - Add Ins: Schwartz, Christopher
in order to present a case.

16:32:15 - Add Ins: Verharen, Art
Capello was arrested along with def - didnt file on him - insuff evidence to

16:32:31 - Add Ins: Verharen, Art
tie him to drugs - never charged - that was told to defense. Re reports

16:32:41 - Add Ins: Verharen, Art
relating to him, there is FBI report from very same agent, Clemenson,

16:32:51 - Add Ins: Verharen, Art
provided to counsel. All reports provided to counsel, including ISP. ISP

16:33:03 - Add Ins: Verharen, Art
says no notes taken. FBI said notes were made after his arrest - arrest was

16:33:18 - Add Ins: Verharen, Art
1/6/05 - briefly interviewed by FBI and T. Morgan at jail. Reports relating

16:33:30 - Add Ins: Verharen, Art
to that contact have been provided. Notes FBI has re debriefing per plea

16:33:44 - Add Ins: Verharen, Art

agreement that fell thru - they wont give me those notes - FBI wont give them
16:33:59 - Add Ins: Verharen, Art
- it would compromise an on-going investigation. It has nothing to do with
16:34:07 - Add Ins: Verharen, Art
case before the court. It relates to conversations that occurred per plea
16:34:20 - Add Ins: Verharen, Art
agreement after def was out of jail-no relevance. Counsel sat in on all
16:34:33 - Add Ins: Verharen, Art
those interviews (Anne Taylor). She knows what happened in the interviews.
16:34:45 - Add Ins: Verharen, Art
I've given them everything except FBI notes - I cant give them. Not relevant
16:35:02 - Add Ins: Verharen, Art
to the case.
16:35:04 - Judge: Hosack, Charles
FBI notes re their exploration of plea agreement resolution.
16:35:19 - Add Ins: Verharen, Art
yes.
16:35:28 - Add Ins: Verharen, Art
Detailed report re FBI contact with Capello has been provided.
16:35:59 - Add Ins: Schwartz, Christopher
re FBI stuff - how do we know what is in notes without seeing them.
16:36:16 - Add Ins: Schwartz, Christopher
Interviews did go on after arrest - dont know what was discussed. Just becuz
16:36:48 - Add Ins: Schwartz, Christopher
PA cant get them doesnt mean they arent to be given to us - exculpatory
16:37:03 - Add Ins: Schwartz, Christopher
evidence. FBI was on stand testifying, but now he wont give us notes. He
16:37:25 - Add Ins: Schwartz, Christopher
sai nothing def gave us was useable, now he says he wont give us the notes.
16:37:42 - Judge: Hosack, Charles
re: issues for the trial, (1) not sure that FBI would pay great deal of
16:38:06 - Judge: Hosack, Charles
attention to me; Even assuming I had ability to do that, I dont see --PA
16:38:44 - Judge: Hosack, Charles
doesnt have notes -he isnt saying he'll try to get information in after -
16:39:02 - Judge: Hosack, Charles
dont see how it will come in. Trial is focusing on date of event. If State
16:39:20 - Judge: Hosack, Charles
tries at trial to pop up with this information, no success in getting it in -
16:39:31 - Judge: Hosack, Charles
irrelevant re trial. Notes re Capello have been produced.
16:39:40 - Judge: Hosack, Charles
Without looking at notes, dont know relevance (re issue to enforce plea
16:40:15 - Judge: Hosack, Charles
agreement); Up to state to determine whether information being produced was
16:41:17 - Judge: Hosack, Charles
useable and to state's satisfaction, and it wasnt. Dont see where taking on
16:41:29 - Judge: Hosack, Charles
FBI would make court reconsider its decision on motion to enforce plea
16:41:48 - Judge: Hosack, Charles
agreemet. Motion to Compel wont help us at trial or casue the court to have

16:41:57 - Judge: Hosack, Charles
any thing to reconsider. DENY MOTION TO COMPEL DISCOVERY.
16:42:28 - Judge: Hosack, Charles
Various motions to continue have already been addressed.
16:43:03 - Judge: Hosack, Charles
more apt to be tried the week of the 17th rather than 10th - we have waiver
16:43:18 - Operator
Stop recording:

Session: Hosack040606P
Session Date: 2006/04/06
Judge: Hosack, Charles
Reporter: Schaller, Joann

Division: DIST
Session Time: 09:28

Courtroom: Courtroom9

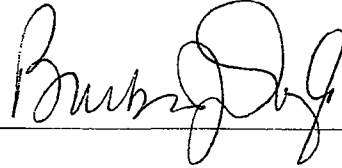
Clerk(s):
Douglas, Barbara

State Attorney(s):

Public Defender(s):

Prob. Officer(s):

Court interpreter(s):



Case ID: 0001

Case number: CR2005-403
Plaintiff:
Plaintiff Attorney:
Defendant: Gosch, Kirk J
Co-Defendant(s):
Pers. Attorney:
State Attorney:
Public Defender:

2006/04/06

15:26:41 - Operator

Recording:

15:26:41 - New case

Gosch, Kirk J

Pretrial Conf.

15:26:47 - Judge: Hosack, Charles

Art Verharen, Chris Schwartz Ann Taylor and def presnet. Understand parties

15:27:16 - Judge: Hosack, Charles

are ready to go to trial. Defense would prefer the 2nd week - 17th -

15:27:48 - Judge: Hosack, Charles

Plan to take your trial as priority matter on the week of the 17 of April.

15:28:00 - Judge: Hosack, Charles

Stay in touch with your attorney. You dont need to be here on the morning of

15:28:12 - Judge: Hosack, Charles

the 10th. Be here at 9am on Monday, April 17.

15:28:48 - Defendant: Gosch, Kirk J

yes

15:28:52 - Operator

Stop recording:

Session: Hosack050406P
Session Date: 2006/05/04
Judge: Hosack, Charles
Reporter: Schaller, Joann

Division: DIST
Session Time: 03:00

Courtroom: Courtroom9

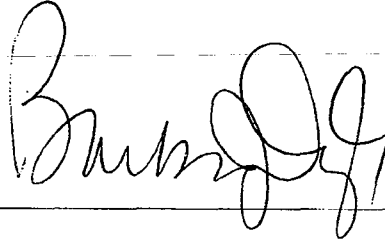
Clerk(s):
Douglas, Barbara

State Attorney(s):

Public Defender(s):

Prob. Officer(s):

Court interpreter(s):



Case ID: 0004

Case number: CR2005-403
Plaintiff:
Plaintiff Attorney:
Defendant: Gosch, Kirk J
Co-Defendant(s):
Pers. Attorney:
State Attorney:
Public Defender:

2006/05/04

15:44:10 - Operator
Recording:
15:44:10 - New case
Gosch, Kirk J
15:45:02 - Judge: Hosack, Charles
Def is present; Christopher Schwartz and Art Verharen present. HERE ON
15:45:15 - Judge: Hosack, Charles
PRETRIAL CONFERENCE.
15:45:40 - Add Ins: Schwartz, Chris
Move continue - lab person gone - ask it be reset in July.
15:45:59 - Add Ins: Verharen, Art
no objection
15:46:02 - Judge: Hosack, Charles
RESET MATTER FOR 4 DAY JURY TRIAL JULY 10, 2006 AT 9 AM. RESET PRETRIAL
15:46:37 - Judge: Hosack, Charles
CONFERENCE ON JUNE 29 AT 3PM.
15:47:02 - Judge: Hosack, Charles
THE P.O. BOX OF DEF IS NOT WORKING FOR MAIL OF DEF.

15:47:22 - Defendant: Gosch, Kirk J
7520 N. 15th Street, Dalton Gardens, 83815.
15:47:48 - Judge: Hosack, Charles
ok
15:48:04 - Judge: Hosack, Charles
Vacate May 8 jury trial.
15:48:36 - Operator
Stop recording:

Session: Hosack062906P
Session Date: 2006/06/29
Judge: Hosack, Charles
Reporter: Schaller, Joann

Division: DIST
Session Time: 03:00

Courtroom: Courtroom9

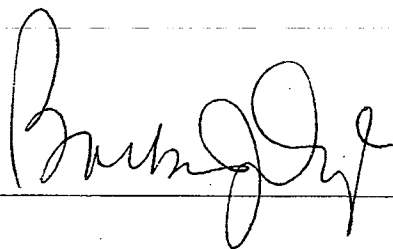
Clerk(s):
Douglas, Barbara

State Attorney(s):

Public Defender(s):

Prob. Officer(s):

Court interpreter(s):



Case ID: 0009

Case number: CR2005-403

Plaintiff:

Plaintiff Attorney:

Defendant: Gosch, Kirk J

Co-Defendant(s):

Pers. Attorney:

State Attorney:

Public Defender:

2006/06/29

16:50:32 - Operator

Recording:

16:50:32 - New case

Gosch, Kirk J

16:51:12 - Judge: Hosack, Charles

PRETRIAL CONFERENCE. Anne Taylor, Reese Sterett and Def all present.

16:51:41 - Judge: Hosack, Charles

Set for trial July 10 - case has been continued several times - I've

16:51:59 - Judge: Hosack, Charles

suggested we continue this on priority basis to July 31, 2006 and work with

16:52:08 - Judge: Hosack, Charles

pro tems that are available. Def is to keep in touch with his attorney.

16:54:21 - Judge: Hosack, Charles

Hopefully we get confirmation from PA that there is no problem with that

16:54:29 - Judge: Hosack, Charles

date. I'll then check with other judges re their trials - want to confirm

16:54:52 - Judge: Hosack, Charles

the week of July 10 with your offices re July 31 trial date.

16:55:01 - General:
Time stamp
16:55:32 - Operator
Stop recording:

ORIGINAL

Anne C. Taylor, Deputy Public Defender
Office of the Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83814
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 5836

STATE OF IDAHO
COUNTY OF KOOTENAI } ss
FILED:

2006 JUL 10 PM 3:08

CLERK DISTRICT COURT

[Signature]
DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,

Plaintiff,

V.

KIRK J. GOSCH,

Defendant.

CASE NUMBER CR-05-0000403
Fel

MOTION TO CONTINUE JURY TRIAL

COMES NOW, the above named defendant, by and through his attorney, Anne Taylor,
Deputy Public Defender and hereby moves the Court for an Order continuing the Jury Trial now
set for July 31, 2006.

This motion is made on the grounds that Defense witness Vickie Carlock has pre-
approved vacation out of state from July 26, 2006 through August 7, 2006.

DATED this 10 day of July, 2006.

OFFICE OF THE KOOTENAI
COUNTY PUBLIC DEFENDER

BY: *[Signature]*
ANNE TAYLOR
DEPUTY PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same in the interoffice mailbox on the 10th day of July, 2006, addressed to:

Kootenai County Prosecutor

Lisa Beeler

OPTIONAL

WILLIAM J. DOUGLAS
Prosecuting Attorney
501 Government Way/Box 9000
Coeur d'Alene, ID 83816-9000
Telephone: (208) 446-1800

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED:

2006 JUL 18 AM 10:06

CLERK DISTRICT COURT

[Signature]
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,

Plaintiff,

vs.

KIRK J. GOSCH,

Defendant.

Case No. **CR-F05-403**

**MOTION TO RELEASE
PLAINTIFF'S EXHIBITS**

COMES NOW, ARTHUR VERHAREN, Deputy Prosecuting Attorney for Kootenai County Idaho, and hereby moves the above entitled Court for an order releasing to the Prosecutor's office the Plaintiff's exhibit(s), admitted into evidence at the motion to suppress hearing before Judge Hosack. This request is made on the grounds that the exhibit(s) are needed for trial.

DATED this 17 day of July, 2006.

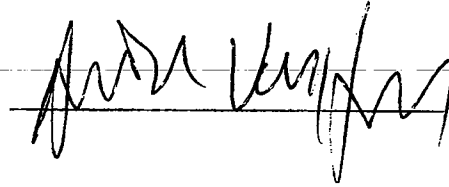
WILLIAM J. DOUGLAS
Prosecuting Attorney for
Kootenai County, Idaho

[Signature]
ARTHUR VERHAREN
Deputy Prosecuting Attorney

**MOTION TO RELEASE PLAINTIFF'S
EXHIBITS: Page 1**

Prosecutor's Certificate of Transmittal

I hereby certify that on the 17 day of July, 2006, a true and correct copy
of the foregoing was caused to be mailed:
PUBLIC DEFENDERS OFFICE
I.O.M.

A handwritten signature in black ink, appearing to read "Andrew K. Vengler", is written over a horizontal line.

MOTION TO RELEASE PLAINTIFF'S
EXHIBITS: Page 2

ORIGINAL

STATE OF IDAHO } SS
COUNTY OF KOOTENAI
FILED: 7-19-06
AT 8:45 O'CLOCK A M
CLERK, DISTRICT COURT
Baird S. English
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)	Case No. CR-F05-403
)	
Plaintiff,	)	ORDER TO
	)	RELEASE EXHIBITS
vs.)	
)	
KIRK J. GOSCH,)	
)	
Defendant.)	

The Court having before it the State's motion, and good cause appearing now, therefore;
IT IS HEREBY ORDERED that the above entitled Plaintiff's Exhibit(s) entered at the
motion to suppress hearing, and the same hereby are, released to the Prosecutor's office.

ENTERED this 19th day of July, 2006.

[Signature]
JUDGE

CLERK'S CERTIFICATE OF MAILING

I hereby certify that on the 19 day of July, 2006, that a true and correct copy of
the foregoing was mailed/delivered by regular U.S. Mail, postage prepaid, Interoffice Mail, Hand
Delivered, or Faxed to:

Prosecutor X 7-19-06 Defense Attorney X Defendant _____
KCPSB _____ Auditor _____ Police Agency _____
Bonding Co. _____ Other _____
@ 8:45 PM

DANIEL ENGLISH
CLERK OF THE DISTRICT COURT

BY: [Signature], Deputy

ORDER TO RELEASE EXHIBITS

STATE OF IDAHO } SS
COUNTY OF KOOTENAI }
FILED: 7-24-06
AT _____ O'Clock
CLERK, DISTRICT COURT
DEPUTY

IN THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO

In re: the Assignment of:) CASE NO. CR-05-403
)
)
SENIOR JUDGE)
GEORGE D. CAREY) ORDER ASSIGNING
) SENIOR JUDGE
)
_____)


Whereas, the Supreme Court has assigned Senior Judge GEORGE D. CAREY to the First Judicial District to hear cases that may be assigned by the Administrative District Judge or his designee during the period of July 1, 2006, through June 30, 2007.

IT IS SO ORDERED that Senior Judge GEORGE D. CAREY may hear any Kootenai County civil and/or criminal matters regularly coming before the court during the period July 24, 2006, through July 28, 2006.

IT IS FURTHER ORDERED that the assignment of any case hereby assigned to Senior Judge GEORGE D. CAREY is effective upon notice, and a copy of this order shall be filed in the court file of each case hereby assigned.

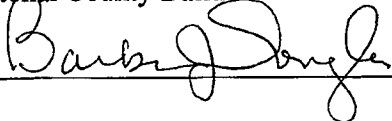
IT IS FURTHER ORDERED that a copy of this Order shall be placed in a "District Judge/Pro Tem Judge Assignments" file to be maintained by the Clerk of the Court of each county in which cases are assigned to Senior Judge GEORGE D. CAREY.

ENTERED this 24 day of July, 2006.


CHARLES W. HOSACK
ADMINISTRATIVE DISTRICT JUDGE

Copies sent July 24, 2006, to:

Hon. George D. Carey
Kootenai County Administration
Karlene Behringer, Trial Court Administrator
Kootenai County Criminal Dept.
Kootenai County Civil Dept.
Dawn Mitchell, Calendar Clerk
Kootenai County Bailiffs

By 

ORDER ASSIGNING SENIOR JUDGE

STATE OF IDAHO } ss
COUNTY OF KOOTENAI }
FILED: 7-27-06
AT _____ O'CLOCK _____ M
CLERK, DISTRICT COURT
Charmaine Nollett
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE
OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

THE STATE OF IDAHO,)

Plaintiff,)

vs.)

KIRK JUILLARD GOSCH,)

Defendant.)

Case No. CR-F05-403

JURY INSTRUCTIONS

HONORABLE GEORGE D. CAREY

Senior District Judge

Presiding

INSTRUCTION NO. 1

Members of the Jury: At this time I shall read some preliminary instructions on the law.

Faithful performances by you of your duties are vital to the administration of justice.

The law applicable to this case is contained in these instructions and other instructions which I shall read to you at the close of the trial. It is your duty to follow the instructions.

If the instructions state a rule, direction or idea more than once, no emphasis is intended and none must be inferred. The order in which the instructions are given has no significance as to their relative importance. You must consider the instructions as a whole, not picking out one instruction and disregarding others.

The applicability of some instructions may depend upon the conclusions you reach as to what the facts are. The fact that a particular instruction has been given must not be taken as indicating my opinion as to what the facts are. If an instruction applies only to a state of facts which you find does not exist, you shall disregard the instruction.

It is your duty to determine the facts from the evidence produced in open court. You are to apply the law to the facts and in this way decide the case. Neither sympathy nor prejudice should influence you.

The evidence which you are to consider consists of testimony of the witnesses and the exhibits offered and received. Arguments, statements, and remarks of counsel are intended to help you in understanding the evidence and applying the law, but they are not evidence. If a particular argument, statement, or remark has no basis in the evidence, you should disregard it. Please note, however, that an admission of fact by one attorney is binding on his party and agreements of fact by all attorneys are binding on all parties.

Neither by these instructions nor by any of my rulings or remarks during trial do I mean to indicate an opinion as to the facts nor that I believe or disbelieve any witness. You must determine which witnesses you believe, what portion of their testimony you accept, and what weight you attach to it.

During the trial I may sustain objections to questions asked without permitting a witness to answer, or, where an answer has been made, I may instruct that it be stricken from the record and that you disregard it and dismiss it from your minds. You must not draw an inference from a question which I do not permit a witness to answer; nor should you consider testimony which has been stricken in reaching your decision. The law requires that your decision be made solely upon the evidence produced in court. Evidence which I exclude from your consideration will be excluded because it is not legally admissible in a trial.

Whenever evidence is admitted for a limited purpose, you must not consider it for any other purpose. Your attention will be called to these matters, if any, when the evidence is admitted.

The law does not require you to accept all of the evidence which is presented to you. You must make your own evaluation of the evidence and determine the degree of weight you choose to give to it.

The testimony of a witness may fail to conform to the facts as they occurred because he is lying, or because his recollection of the event is faulty, or because he has not expressed himself clearly in giving his testimony.

You bring with you to this courtroom all of the experience and background of your lives. In your everyday affairs you determine for yourselves the reliability or unreliability of statements made to you by others. The same considerations that you use in your everyday dealings are the considerations which you should apply in assessing the credibility of a witness. Among the items which you may consider in determining the weight you will give to a particular witness's testimony are the following:

- The interest or lack of interest of a witness in the outcome of this case;
- the bias or prejudice of a witness;
- the age, appearance, and manner in which a witness gives his testimony;
- the opportunity that a witness has to observe the facts concerning which he testifies;
- the probability or improbability of a witness's testimony in light of all of the other evidence in the case;
- the contradiction or corroboration of a witness's testimony by other evidence;
- statements made by a witness at other times inconsistent with his present testimony.

In evaluating exhibits, you may consider such items as: the circumstances under which the exhibit was created, obtained, or found; the circumstances under

which the exhibit was maintained prior to trial; and the likelihood that the exhibit accurately reflects what it is intended to show in light of all the other evidence in the case.

These considerations may or may not make it appear that there is a discrepancy in the evidence. You may consider whether an apparent discrepancy can be reconciled by fitting the conflicting versions together. If, however, that is not possible, then you will have to determine which version you believe.

The State has the burden of proving the Defendant's guilt of the crime charged beyond a reasonable doubt. The Defendant is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether her guilt is shown, she is entitled to an acquittal. Reasonable doubt is not a mere possible doubt, because everything relating to human affairs, and depending on evidence produced in court, is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction, to an evidentiary certainty, of the truth of the charge.

INSTRUCTION NO. 2

The defendant is here for trial on an Information accusing him of the following crimes:

Count I (Trafficking in Cocaine)

That the defendant, Kirk Juillard Gosch, on or about the 6th day of January, 2005, in the County of Kootenai, State of Idaho, did knowingly possess twenty-eight grams or more of cocaine, a Schedule II controlled substance, or of any mixture or substance containing a detectable amount of cocaine.

Count II (Manufacturing a Controlled Substance)

That the defendant, Kirk Juillard Gosch, on or about the 6th day of January, 2005, in the County of Kootenai, State of Idaho, did unlawfully manufacture a controlled substance, to-wit: Marijuana, a Schedule I controlled substance, by compounding or converting or processing marijuana into honey oil.

Count III (Possession of a Controlled Substance With Intent to Deliver)

That the defendant, Kirk Juillard Gosch, on or about the 6th day of January, 2005, in the County of Kootenai, State of Idaho, did unlawfully possess a controlled substance, to-wit: marijuana, a Schedule I controlled substance, with the intent to deliver the aforementioned controlled substance.

Count IV (Possession of Marijuana in Excess of Three Ounces)

That the defendant, Kirk Juillard Gosch, on or about the 6th day of January, 2005, in the County of Kootenai, State of Idaho, did unlawfully possess a controlled

5

substance, to-wit: Marijuana, a Schedule I controlled substance, in an amount in excess of three ounces.

To this Information the Defendant has entered a plea of "not guilty."

The plea requires the State to prove every material allegation contained in the Information beyond a reasonable doubt. The Information itself is not evidence.

INSTRUCTION NO. 3

Before a defendant may be convicted of trafficking in cocaine by possession, as alleged in Count I, the state must prove each of the following facts beyond a reasonable doubt:

1. The crime occurred in the State of Idaho on or about the date alleged in the information;
2. The identity of the defendant as a perpetrator of the crime;
3. The defendant had possession of 28 grams or more of cocaine;
4. The substance involved was cocaine and was in an amount sufficient to be tested;
5. The defendant knew the substance was cocaine;
6. The defendant acted with general criminal intent.

If the State fails to prove any one or more of the foregoing facts beyond a reasonable doubt, you must find the defendant not guilty. If the state proves every one of the foregoing facts beyond a reasonable doubt, you must find the defendant guilty of trafficking in cocaine by possession

If the state has proved each of the foregoing facts beyond a reasonable doubt except that the state failed to prove that the amount of cocaine possessed was 28 grams or more, than you may find the defendant guilty of the included offense of "Possession of cocaine", but not "Trafficking in cocaine by possession".

INSTRUCTION NO. 4

The element of "General Criminal Intent" means that there must exist a union or joint operation of act or conduct and general criminal intent. To constitute general criminal intent it is not necessary that there should exist an intent to violate the law. When a person intentionally does that which the law declares to be a crime, he or she is acting with general criminal intent, even though she may not know that her act or conduct is unlawful.

8

INSTRUCTION NO. 5

A person has possession of something if he or she knows of its presence and has physical control of it, or if he or she knows of its presence and has the power and intention to control it. More than one person can be in possession of something if each person knows of its presence and has the power and intention to control it.

INSTRUCTION NO. 6

Before a defendant may be convicted of manufacturing a controlled substance, as alleged in Count II, the state must prove each of the following facts beyond a reasonable doubt:

1. The crime occurred in the State of Idaho on or about the date alleged in the information;
2. The identity of the defendant as a perpetrator of the crime;
3. The defendant manufactured marijuana into "honey oil" in one of the ways alleged in the information;
4. The substance involved was marijuana and was in an amount sufficient to be tested;
5. The defendant knew the substance was marijuana;
6. The defendant acted with general criminal intent.

If the State fails to prove any one or more of the foregoing facts beyond a reasonable doubt, you must find the defendant not guilty. If the state proves every one of the foregoing facts beyond a reasonable doubt, you must find the defendant guilty of manufacturing a controlled substance.

Instruction No. 7

"Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, and includes extraction, directly or indirectly, from substances of natural origin, or independently by means of chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container.

INSTRUCTION NO. 8

Before a defendant may be found guilty of possession of a controlled Substance with intent to deliver, as alleged in Count III, the state must prove each of the following facts beyond a reasonable doubt:

1. The crime took place in the State of Idaho on or about the date alleged in the information;
2. The identity of the defendant as the perpetrator;
3. The defendant possessed a controlled substance;
4. The controlled substance was marijuana;
5. The defendant knew the controlled substance was marijuana;
6. The substance was in an amount sufficient to be tested and to determine its composition;
7. The defendant possessed the marijuana with the specific intent to deliver it to another person.

If you have a reasonable doubt whether the state has proved any one or more of the foregoing facts, you shall find the defendant not guilty. If you are satisfied that the State has proved each of the foregoing facts beyond a reasonable doubt, you shall find the defendant guilty of possession of a controlled substance with intent to deliver.

If you find that the State has proved beyond a reasonable doubt each of the foregoing facts except the element of specific intent to deliver, and if you also find beyond a reasonable doubt that the defendant acted with general criminal intent, then you shall find him guilty of the lesser offense of possession of a controlled substance.

INSTRUCTION NO. 9

Before a defendant may be convicted of possession of more than three ounces of marijuana, as alleged in Count IV, the state must prove each of the following facts beyond a reasonable doubt:

1. The crime occurred in the State of Idaho on or about the date alleged in the information;
2. The identity of the defendant as a perpetrator of the crime;
3. The defendant had possession of marijuana in excess of three ounces;
4. The substance involved was marijuana and was in an amount sufficient to be tested;
5. The defendant knew the substance was marijuana;
6. The defendant acted with general criminal intent.

If the State fails to prove any one or more of the foregoing facts beyond a reasonable doubt, you must find the defendant not guilty. If the state proves every one of the foregoing facts beyond a reasonable doubt, you must find the defendant guilty of possession of marijuana in excess of three ounces.

If the state has proved each of the foregoing facts beyond a reasonable doubt except that the state failed to prove that the amount of marijuana was in excess of three ounces, than you may find the defendant guilty of the included offense of "Possession of marijuana ."

INSTRUCTION NO. 10

Each count in the Information charges a separate and distinct offense. You must decide each count separately on the evidence and the law applicable to it, uninfluenced by your decision as to any other count. A defendant may be convicted or acquitted on any or all of the offenses charged. Your finding as to each count must be stated in the verdict form provided to you.

INSTRUCTION NO. 11

Now that each side has rested its case, I shall read some further instructions on the law.

15

INSTRUCTION NO. 12

The term "delivery" means the transfer or attempted transfer, either directly or indirectly, from one person to another.

INSTRUCTION NO. 13

With respect to count one, the determination of weight may include consideration of the weight of the actual cocaine, if any, and any mixture or substance containing a detectible amount of cocaine, if there was any such mixture or substance.

With respect to any count involving a determination of weight you may not include the weight of any packaging materials.

INSTRUCTION NO. 14

A person is qualified to testify as an expert if he has special knowledge, skill, experience, training or education sufficient to qualify him as an expert on the subject to which his testimony relates.

Duly qualified experts may give their opinions on issues in controversy at a trial. To assist you in deciding these issues, you may consider the opinion with the reasons given for it, if any, by the expert who gives the opinion. You may also consider the qualifications and credibility of the expert. You are not bound to accept an expert opinion as conclusive, but should give to it the weight to which you find it to be entitled. You may disregard an expert opinion if you find it to be unreasonable.

INSTRUCTION NO. 15

It is a constitutional right of a defendant in a criminal trial that he may not be compelled to testify. Thus, the decision as to whether he should testify is left to the defendant, acting with the advice and assistance of his attorney. You must not draw any inference of guilt from the fact that he does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

INSTRUCTION NO. 16

The guilt of a defendant may not be established alone by a statement made by him outside of this trial. Before any person may be convicted of a criminal offense, there must be proof, independent of any statement, that the crime in question was committed. It is not necessary that the independent proof includes proof as to identity of the person by whom the offense was committed or that the independent evidence establishes by itself each of the elements of the crime charged. Nevertheless before the defendant may be found guilty the evidence as a whole, which may include the defendant's statements, must prove each and every one of the elements of the crime beyond a reasonable doubt.

INSTRUCTION NO. 17

I have outlined for you the rules of law applicable to this case, and I have explained to you some of the matters which you may consider in weighing the evidence to determine the facts.

The attorneys now will present their closing arguments; thereafter you will retire to the jury room for your deliberations. You will take with you the instructions of the Court, any exhibits admitted into evidence, and any notes taken by you during the trial.

As soon as you retire to the jury room you will select one of your members to preside over your deliberations and to sign the verdict on which you agree. To return a verdict, all twelve of you must agree to the decision. Suitable verdict forms will be provided for any conclusion you may reach. When you have reached a verdict, you shall have it signed and dated and then you will return with it to this room.

INSTRUCTION NO. 18

During your deliberations, you are never to reveal to anyone how the jury stands on any of the questions before you, numerically or otherwise, unless requested to do so by me.

INSTRUCTION NO. 19

The attitude and conduct of jurors throughout the deliberations are important.


You must not resort to any method or means of chance in reaching a verdict.

You must not allow bias, passion, prejudice, or potential punishment to influence you in any way.

It is not productive for a juror to make an emphatic expression of his or her opinion on the outcome of the case at the start of deliberations. If you do so, your sense of pride may be aroused, and you may hesitate to change your opinion even if you are shown that it is incorrect.

Remember that you are not partisans or advocates. You are the judges of the facts. You should consult with each other. You should consider each other's views. You should try to reach an agreement, but only if you can do so without disturbing your individual judgment. Each of you must decide the case for yourself, and you should do so only after a thorough discussion and consideration of all the facts with your fellow jurors.

DATED This 27th day of July, 2006.


GEORGE D. CAREY
Senior District Judge

STATE OF IDAHO } ss. M d
COUNTY OF KOOTENAI
FILED 7-27-06
AT 10:00 CLOCK M
CLERK, DISTRICT COURT
Charmaine Mellett
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

THE STATE OF IDAHO,
Plaintiff,

vs.

KIRK JUILLARD GOSCH,
Defendant.

Case No. Cr-F05-403

VERDICT

We, the Jury in the above-entitled case, find that the Defendant **Kirk Juillard Gosch** is (choose only one of the following with respect to each count):

Count I

Guilty of Trafficking in Cocaine by possession

Guilty of Possession of Cocaine

Not Guilty

Count II

Guilty of Manufacturing a Controlled Substance (Marijuana)

Not Guilty

Count III

Guilty of Possession of Marijuana with Intent
To Deliver

Guilty of Possession of Marijuana

Not Guilty

Count IV

Guilty of Possession of Marijuana in Excess
of Three Ounces

☒

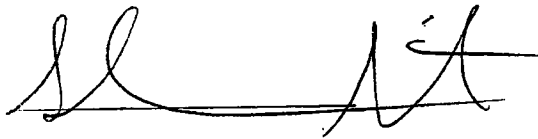
Guilty of Possession of Marijuana

☐

Not Guilty

☐

DATED This 27th day of July, 2006.



MODERATOR

Session: Carey072506A
Session Date: 2006/07/24
Judge: Carey, George D
Reporter: Sitter, Betty

Division: DIST
Session Time: 15:52

Courtroom: Courtroom9

Clerk(s):
Mollett, Charmaine

State Attorney(s):
Verharen, Art

Public Defender(s):
Taylor, Anne

Prob. Officer(s):

Court interpreter(s):

Charmaine Mollett

Case ID: 0001

Case number: CR-2005-00403
Plaintiff:
Plaintiff Attorney:
Defendant: Gosch, Kirk
Additional audio and annotations can be found in case: 0002.
Co-Defendant(s):
Pers. Attorney:
State Attorney:
Public Defender:

2006/07/25

09:05:34 - Operator
Recording:
09:05:34 - New case
Gosch, Kirk
09:05:41 - Judge: Carey, George D
CALLS CASE. A. TAYLOR FOR DEF. A. VERHAREN FOR THE STATE.
09:19:12 - Other: MOLLETT, CHARMAINE
SWEARS WHOLE PANEL FOR VOIR DIRE. CALLS 36 JURORS.
09:19:45 - Judge: Carey, George D
WILL ONLY HAVE A HALF DAY TOMORROW DUE TO OTHER OBLIGATIONS. . DEF CHARGED
09:20:23 - Judge: Carey, George D
WITH 4 COUNTS.DEF HAS PLEADED NOT GUILTY OF ALL CHARGES. SHOULD HAVE A JURY
09:21:45 - Judge: Carey, George D
PICKED BY THE NOON HOUR. INSTRUCTS JURORS ON QUESTIONING. ASK COUNSEL TO
09:25:29 - Judge: Carey, George D

STAND AND INTRODUCE THEMSELVES.

09:32:45 - Add Ins: Verharen, Art
VOIR DIRE. MOVE TO EXCUSE MR. CAMPELL.

09:40:43 - Judge: Carey, George D
EXCUSES MR. CAMPBELL. EXCUSES MS. BEARSTAIL. CLERK CALLS NEW JURORS. #56

09:45:14 - Judge: Carey, George D
FRANCIS RUSSELL AND #1 KIMBERLY ANDERSON. EXCUSES JULIAN WINGHAM. CLERK PICKS

09:47:20 - Judge: Carey, George D
#58 DONNA SIMON. EXCUSES # 39 CYNTHIA OLSON. CLERK PICKS GERALDINE REYES.

09:54:39 - Judge: Carey, George D
EXCUSES #28 REGINA KENDRA. CLERK PICKS #27 HEIDI KELLER. EXCUSES JURORS FOR

10:01:07 - Judge: Carey, George D
SHORT BREAK. RETURN AT 10:15.

10:01:30 - Operator
Stop recording: (On Recess)

10:20:36 - Operator
Recording:

10:20:36 - Record
Gosch, Kirk

10:20:39 - Judge: Carey, George D
BACK ON RECORD.

10:20:58 - Add Ins: Verharen, Art
CONTINUES VOIR DIRE. PASS FOR CAUSE.

10:27:42 - Add Ins: Taylor, Ann
VOIR DIRE. ASK TO EXCUSE MS. REYES.

10:38:36 - Judge: Carey, George D
EXCUSES MS. REYES. CLERK CALLS KAREN LONGTIN.

10:40:16 - Add Ins: Taylor, Ann
CONTINUES VOIR DIRE. PASS FOR CAUSE.

10:52:01 - Judge: Carey, George D
PRE-EMPT CHALLENGES. COUNCIL WILL COME FORWARD. TAKE A BRIEF RECESS UNTIL

10:53:14 - Judge: Carey, George D
11:05.

10:53:22 - Operator
Stop recording: (On Recess)

11:08:17 - Operator
Recording:

11:08:17 - Record
Gosch, Kirk

11:08:20 - Judge: Carey, George D
BACK ON RECORD. EXCUSES #40 PHYLLIS MILLER.

11:11:02 - Add Ins: Verharen, Art
VOIR DIRE NEW JUROR. EXCUSES MR. NEAL.

11:13:25 - Judge: Carey, George D
EXCUSES MR. NEAL. CLERK PICKS NEW

11:15:51 - Add Ins: Taylor, Ann
VOIR DIRE NEW JUROR MR. CRUICKSHANK. PASS FOR CAUSE.

11:17:13 - Judge: Carey, George D
VOIR DIRE COMPLETED. COUNCIL APPROACHES THE BENCH FOR PRE-EMPT CHALLENGES.

11:19:15 - Operator
Stop recording: (Off Record)

11:36:15 - Operator
Recording:
11:36:15 - Record
Gosch, Kirk
11:36:26 - Judge: Carey, George D
PRE-EMPT CHALLENGES COMPLETED. CALLS JURORS PICKED. STATE AND DEF ACCEPT
11:40:21 - Judge: Carey, George D
JURORS. CLERK SWEARS WHOLE PANEL JURY. TAKE A LUNCH BREAK AND RETURN AT 1:30.
11:45:11 - Judge: Carey, George D
11:45:26 - Operator
Stop recording: (On Recess)
13:34:03 - Operator
Recording:
13:34:03 - Record
Gosch, Kirk
13:34:05 - Judge: Carey, George D
BACK IN SESSION. NO OBJECTION TO EXCLUSION OF WITNESSES.
13:34:40 - Add Ins: Taylor, Ann
MAKE A MOTION FOR MISTRIAL. JUROR MADE A COMMENT THAT SHE LIVED NEXT TO THE
13:35:13 - Add Ins: Taylor, Ann
DEFENDANT AND DIDN'T TRUST HIM. ALSO AN OFFICER WAS HERE IN UNIFORM. FEEL THE
13:35:43 - Add Ins: Taylor, Ann
TRIAL HAS BEEN TAINTED.
13:36:04 - Add Ins: Verharen, Art
MAKE A MOTION TO DENY THE DEFENSES MOTION FOR A MISTRIAL.
13:36:34 - Judge: Carey, George D
DON'T FEEL THE TRIAL WAS TAINTED. OFFICER WAS ASKED AND HE ANSWERED. MOTION
13:37:12 - Judge: Carey, George D
WILL BE DENIED. BRING BACK THE JURY AT THIS TIME.
13:37:52 - Operator
Stop recording: (Off Record)
13:38:53 - Operator
Recording:
13:38:53 - Record
Gosch, Kirk
13:38:53 - Judge: Carey, George D
JURY IS PRESENT AND IN PLACE. READS JURY INSTRUCTIONS.
13:55:16 - Judge: Carey, George D
OPENING STATEMENTS .
13:57:03 - Add Ins: Verharen, Art
GIVES OPENING STATEMENT.
14:09:14 - Add Ins: Taylor, Ann
OPENING STATEMENT.
14:10:58 - Add Ins: Verharen, Art
CALLS FIRST WITNESS. CAPTAIN ROLLINS.
14:11:55 - Other: ROLLINS, CLARK
#1 PA DX CAPTAIN OF INVESTIGATIONS. OVERSEE DAY TO DAY OPERATIONS. FOCUS
14:12:45 - Other: ROLLINS, CLARK
ON NARCOTICS AND VIOLENT CRIMES. HAVE 10 DETECTIVES AND 2 DETECTIVE SARGENTS.
14:13:12 - Other: ROLLINS, CLARK
WORK HAND IN HAND WITH THE FBI. 1-6-05 PARTICIPATED IN A SEARCH WARRANT. MY

14:13:47 - Other: ROLLINS, CLARK
ROLE TO ASSIST IN SEARCHING THE HOUSE. WAS A PRE SEARCH WARRANT MEETING.

14:14:28 - Other: ROLLINS, CLARK
DETECTIVE BERGER RAN THE MEETING. IT WAS HIS CASE. HAD OFFICERS UP THERE

14:15:15 - Other: ROLLINS, CLARK
DOING A SURVEILLANCE. WHITE APT OVER A GARAGE. DETECTIVE BERGER COMMANDED

14:16:10 - Other: ROLLINS, CLARK
EVERYONE OUT OF THE HOUSE. ANNOUNCED WE WERE POLICE AND TO GET TO THE GROUND.

14:16:51 - Other: ROLLINS, CLARK
MR. GOSCH DID NOT COMPLY. HEARD GLASS BREAK BEHIND THE DOOR IN THE KITCHEN

14:17:30 - Other: ROLLINS, CLARK
AREA. FORCED THE DOOR OPEN. GRABBED HIM BY THE SHIRT AND FORCED HIM TO THE

14:17:56 - Other: ROLLINS, CLARK
GROND. MY DUTIES ENDED AFTER I DETAINED MR. GOSCH.

14:19:05 - Other: SWARTZ, C.
DA CRX SECURED THE RESIDENCE. MR. GOSCH COMPLAINED HIS KNEE HURT.

14:19:49 - Other: SWARTZ, C.
OFFERED MEDICAL HELP. WASN'T MUCH IN THE LIVING ROOM. HE WAS IN THE PROCESS

14:20:25 - Other: SWARTZ, C.
OF MOVING. DET PAUL BERGER WAS IN CHARGE. I WAS UNDER HIS DIRECTION.

14:21:06 - Judge: Carey, George D
EXCUSE THE WITNESS.

14:21:18 - Add Ins: Verharen, Art
CALLS VICKI CARLOCK.

14:21:47 - Add Ins: Carlock, Vicki
PA DX VICKI CARLOCK. DETECTIVE SARGENT FOR CDA. WORKED PATROL FOR 2

14:22:22 - Add Ins: Carlock, Vicki
YEARS. WAS THEN HIRED TO WORK NARCOTICS. SUPERVISE A GROUP OF DETECTIVES.

14:22:48 - Add Ins: Carlock, Vicki
1-6-05 PARTICIPATED IN A SEARCH WARRANT. ASK TO DO A SURVILENCE AT THE HOUSE.

14:23:20 - Add Ins: Carlock, Vicki
BIG HOUSE AND LITTLE HOUSE ON SOME ACREAGE UP THERE. I WAS IN A BEDROOM.

14:24:13 - Add Ins: Carlock, Vicki
DRAPERIES ON THE WINDOW. GOT THERE ABOUT 11:17 AM. PLTS EXHIBIT 45. DIAGRAM

14:25:07 - Add Ins: Carlock, Vicki
OF THE HOMES ON THE PROPERTY. DIAGRAM NOT TO SCALE.

14:26:17 - Add Ins: Verharen, Art
MOVE TO ADMIT EXHIBIT 45.

14:26:31 - Judge: Carey, George D
EXHIBIT 45 ADMITTED.

14:29:23 - Add Ins: Carlock, Vicki
PA DX WHITE PICKUP, WHITE CARGO VAN, CAR AND BLACK JEEP CHEROKEE. 12:02

14:30:00 - Add Ins: Carlock, Vicki
WHITE CARGO VAN SHOWED UP. BELONGED TO MR. MCCORMICK. HE EXITED THE VAN AND

14:30:30 - Add Ins: Carlock, Vicki
WENT IN THE SMALLER RESIDENCE. MR. CAPELLO CAME OUT AND WENT TOWARDS THE

14:31:00 - Add Ins: Carlock, Vicki
WHITE TRUCK. WAS OUT OF MY VIEW. CAME BACK CARRYING A PLASTI C BAG, LIKE A

14:31:29 - Add Ins: Carlock, Vicki
WHITE GARBADGE BAG. 12:36 THE ITEMS WERE BEING MOVED OUT TO THE VEHICLES. MR

14:32:24 - Add Ins: Carlock, Vicki

MCCORMICK AND MR CAPPELLO CAME OUT OF THE HOUSE. DESCRIBES DEF IN THE
14:32:57 - Add Ins: Carlock, Vicki
COURTROOM. MR GOSH HAD 2 LARGE GARBAGE BAGS. MR MCCORMICK CAME OUT WITH A
14:33:55 - Add Ins: Carlock, Vicki
DUFFLE BAG. MR GOSCH CAME OUT WITH A DUFFLE BAG ALSO. LOADED IT IN THE CAR.
14:34:25 - Add Ins: Carlock, Vicki
MR GOSCH AND MR MCCORMICK WERE BRINGING OUT BEDDING AND CLOTHING TO PUT IN
14:34:55 - Add Ins: Carlock, Vicki
THE SMALL WHITE VEHICLE. 1:07 MR MCCORMICK MOVED IT OUT OF MY VIEW. MR.
14:35:49 - Add Ins: Carlock, Vicki
MCCORMICK AND MR GOSCH WERE THE ONLY TWO REMAINING PEOPLE AT THE HOUSE.
14:36:17 - Add Ins: Carlock, Vicki
SEARCH WARRANT GOT THERE AROUND 1:30 PM. MR. BERGER WAS PROCESSING SOME
14:37:13 - Add Ins: Carlock, Vicki
EVIDENCE.
14:37:26 - Add Ins: Taylor, Ann
DA CRX HOUSES WEREN'T CONNECTED IN ANY WAY. SINGLE LEVEL HOME.
14:38:09 - Add Ins: Taylor, Ann
OTHER HOMES WERE NEAR BY. DID MY SURVEILLANCE FROM A BEDROOM WINDOW IN THE
14:38:49 - Add Ins: Taylor, Ann
BIGGER HOME. VERY NARROW VIEW. MR MCCORMICK SHOWED UP IN A VAN. WATCHED THE
14:40:13 - Add Ins: Taylor, Ann
OFFICERS MAKE THEIR ENTRY INTO THE HOME. DON'T KNOW WHAT WAS IN THE VEHICLES.
14:40:36 - Add Ins: Taylor, Ann
14:41:23 - Add Ins: Carlock, Vicki
DA CRX BAG DIDN'T LOOK LIKE IT HAD ANYTHING IN IT. MR. GOSCH CAME OUT
14:42:04 - Add Ins: Carlock, Vicki
WITH BLACK BAGS. NEVER WENT INSIDE THE SMALL RESIDENCE.
14:43:07 - Judge: Carey, George D
EXCUSE THE WITNESS. TAKE A BRIEF RECESS. RECONVENE IN 10 MINUTES.
14:44:18 - Operator
Stop recording: (On Recess)
14:44:33 - Operator
Recording:
14:44:33 - Record
Gosch, Kirk
14:44:35 - Judge: Carey, George D
MS TAYLOR BROUGHT SOMETHING TO MY ATTENTION.
14:45:24 - Add Ins: Taylor, Ann
INFORMATION YOU READ NOT RIGHT. SEEMS TO BE A PROBLEM. ORDER HOLDING, HAVE A
14:45:57 - Add Ins: Taylor, Ann
DISCREPANCY. MR GOSCH WAIVED PRE-LIM HEARING. I THOUGHT HE WAS BOUND OVER ON
14:46:31 - Add Ins: Taylor, Ann
4 CHARGES. SHOULD HAVE A PLEA OFFER WITH 4 CHARGES.
14:47:15 - Add Ins: Verharen, Art
HAD A PLEA AGREEMENT ON THE FOUR CHARGES. NEVER A CHALLENGE TO THE ORDER
14:47:43 - Add Ins: Verharen, Art
BINDING OVER.
14:48:10 - Add Ins: Taylor, Ann
IF WANT TO PROCEED ON THE PLEA OFFER. CAN GET RID OF THE TRAFFICKING CHARGE.
14:48:53 - Add Ins: Taylor, Ann

NOT OUR RESPONSIBILITY TO FIX THE PROSECUTORS MISTAKES. SOMETHING NEEDS TO BE
14:49:34 - Add Ins: Taylor, Ann
RESOLVED.
14:49:39 - Add Ins: Verharen, Art
PLEA OFFER DOES ADDRESS THE TRAFFICKING CHARGE.
14:50:01 - Judge: Carey, George D
ORIGINAL COMPLAINT CHARGED TRAFFICKING MARA AND COCAINE. 1-26-06 AMENDED
14:50:55 - Judge: Carey, George D
COMPLAINT FILED. MINUTES SAY DEF WAIVED PRE-LIM HEARING, OFFER OPEN 14 DAYS.
14:52:07 - Judge: Carey, George D
NEW COMPLAINT ADDRESSES 2 CHARGES. LOOKS LIKE ALL THE CHARGES WEREN'T PUT ON
14:52:54 - Judge: Carey, George D
THE ORDER BINDING OVER. TRAFFIKING IN MARA AND COCAINE ARE THE ONLY CHARGES
14:54:13 - Judge: Carey, George D
COMMITTED TO. GO BY THE WRITTEN ORDER. ONLY THING WE CAN TRY HIM ON IS
14:55:46 - Judge: Carey, George D
TRAFFICING COCAINE. GIVE BOTH THE ATTORNEYS AN OPPORTUNITY TO LOOK INTO THE
14:56:59 - Judge: Carey, George D
PROBLEM AND DECIDE WHAT TO DO.
14:57:18 - Operator
Stop recording: (On Recess)
15:07:42 - Operator
Recording:
15:07:42 - Record
Gosch, Kirk
15:07:46 - Judge: Carey, George D
BACK ON RECORD. JURY PRESENT AND IN PLACE.
15:08:45 - Add Ins: Verharen, Art
CALLS DEPUTY SHAW.
15:09:16 - Other: SHAW, DEPUTY JASON
PA DX BEEN WITH THE DEPT SINCE 2003. K-9 DEPUTY. HANDLE A POLICE DOG.
15:09:50 - Other: SHAW, DEPUTY JASON
DOGS NAME CARO. HAVE HAD TRAINING WITH THE DOG. BUILD A BOND WITH THE DOG.
15:10:29 - Other: SHAW, DEPUTY JASON
TRAINED TO SEARCH. TAUGHT DRUG TRAINING. CERTIFIED IN WASHINGTON AND IDAHO.
15:11:28 - Other: SHAW, DEPUTY JASON
HAVE DONE ABOUT 1100 SEARCHS WITH MY DOG. AN ODOR WILL REMAIN ON A
15:12:26 - Other: SHAW, DEPUTY JASON
CONTAINER EVEN IF ITS EMPTY. RESIDUAL ODOR. GET RE-CERTIFIED EVERY 15 MONTHS.
15:13:08 - Other: SHAW, DEPUTY JASON
SEARCHING CARS START AT FRONT HEAD LIGHT AND GO COUNTER CLOCK WISE. DOGS
15:13:55 - Other: SHAW, DEPUTY JASON
BEHAVIOR CHANGES WHEN THEY SMELL NARCOTICS. THEY WILL GO UNDER A VEHICLE.
15:14:31 - Other: SHAW, DEPUTY JASON
1-6-05 AT RESIDENCE OFF RIM ROCK ROAD. WAS ADVISED I COULD SEARCH THE CARS
15:15:13 - Other: SHAW, DEPUTY JASON
BY THE ISP. FOCUSED ON A WHITE GMC PICKUP TRUCK. DOG LEFT ME AT THE GMC
15:15:46 - Other: SHAW, DEPUTY JASON
VEHICLE AND WENT TO THE WHITE SUZUKI CAR. HE CAME BACK TO ME AND THEN WE
15:16:26 - Other: SHAW, DEPUTY JASON
CONTNUED ON THE GMC TRUCK. STOOD BACK AND WATCHED MY DOG SNIFF OUT THE

15:17:16 - Other: SHAW, DEPUTY JASON
VEHICLE. LET THE DOG INTO THE SMALL CAR. ALOT OF STUFF IN THE CAR. HE WANTED

15:17:53 - Other: SHAW, DEPUTY JASON
TO GO IN THE BACK SEAT OF THE CAR. I HAND SEARCHED THE CAR. DIDN'T FIND

15:18:46 - Other: SHAW, DEPUTY JASON
ANYTHING. WENT AROUND TO THE TRUNK. DOG NOSED OPEN THE TRUNK. FOUND A GREEN

15:19:49 - Other: SHAW, DEPUTY JASON
LEAFY SUBSTANCE THAT APPEARED TO BE MARAJUANA. I WAS THEN DIRECTED IN THE

15:20:36 - Other: SHAW, DEPUTY JASON
RESIDENCE. DOG FOUND A GLASS PIPE. AGAIN A CHANGE OF BEHAVIOR IN THE DOG.

15:21:23 - Other: SHAW, DEPUTY JASON
WENT OUT TO THE JEEP CHEROKEE . DOG ALERTED ON THAT VEHICLE. WENT TO THE

15:21:50 - Other: SHAW, DEPUTY JASON
TRUNK LID. OPENED BACK HATCH. PULLED SOME STUFF OUT OF THE VEHICLE. DOG

15:22:19 - Other: SHAW, DEPUTY JASON
SHOWED INTEREST IN THE SPARE TIRE AREA. DOG JUMPED TO THE FRONT SEAT. ALERTED

15:23:02 - Other: SHAW, DEPUTY JASON
ME TO THE CONSOLE AREA. SMALL POCKET AREA THE DOG FOUND MONEY. \$100.00 BILLS.

15:23:55 - Other: SHAW, DEPUTY JASON
HAVE DONE CURRENCY SEARCHES BEFORE. DA CRX

15:24:57 - Other: SHAW, DEPUTY JASON
DOG ALERTS ME BY SITTING, STANDING OR STARRING. ANN TAYLOR CRX. GIVE THE DOG

15:26:51 - Other: SHAW, DEPUTY JASON
A COMMAND TO SEARCH. HE'S ON HIS OWN WHEN SEARCHING. BELIEVE THERE WAS A BEAN

15:28:05 - Other: SHAW, DEPUTY JASON
BAG CHAIR IN THE VEHICLE. TRUNK WAS NOT VERY FULL. BAG OF MARAJUANA WAS NOT

15:29:35 - Other: SHAW, DEPUTY JASON
IN THE SPEAKER BOX. WAS A RED COLORED SUBSTANCE IN THE BAG ALSO. HATCH AREA

15:30:27 - Other: SHAW, DEPUTY JASON
HAD SEVERAL PACKS IN IT. NO ONE WAS IN THE BATHROOM WHEN I WENT IN THERE.

15:31:38 - Judge: Carey, George D
EXCUSE THE WITNESS.

15:31:50 - Add Ins: Verharen, Art
CALL DEPUTY STONE.

15:32:45 - Other: STONE, DEPUTY JOHN ARTHUR
PA DX WORK IN THE WORK RELEASE CENTER. WORKED AT THE JAIL 8

15:33:17 - Other: STONE, DEPUTY JOHN ARTHUR
YEARS. POST CERTIFIED IN IDAHO. HAVE TRAINING IN TAKING FINGERPRINTS. TAKE

15:34:09 - Other: STONE, DEPUTY JOHN ARTHUR
FINGERPRINTS AT THE JAIL. TAKE SEVERAL HUNDRED PRINTS A YEAR. HAVE A MACHINE

15:35:26 - Other: STONE, DEPUTY JOHN ARTHUR
FOR TAKING FINGERPRINTS. ASK THE DEF ALOT OF QUESTIONS ON ADDRESS, MEDICAL,

15:36:23 - Other: STONE, DEPUTY JOHN ARTHUR
IDENTIFYING MARKS ETC. COMPUTERIZED MACHINE. MACHINE SCANS THE FINGERPRINT.

15:37:10 - Other: STONE, DEPUTY JOHN ARTHUR
PRNT WILL SHOW ON THE SCREEN. VERIFY THE INFORMATION THAT APPEARS FROM THE

15:39:06 - Other: STONE, DEPUTY JOHN ARTHUR
BOOKING. MACHINE TELLS YOU WHAT FINGER TO SCAN. DON'T HANDLE ANY INK WHEN

15:40:06 - Other: STONE, DEPUTY JOHN ARTHUR
DOING THIS.

15:41:25 - Judge: Carey, George D

ATTORNEYS ARGUE WITH THE JUDGE. RELEASE THE JURORS FOR DISCUSSION.

15:42:48 - Other: SCHWARTZ, C.
OBJECT TO THE FINGERPRINT CARDS. CAN'T VERIFY THE PRINTS. THE MACHINE DOES

15:43:12 - Other: SCHWARTZ, C.
ALL THE WORK. FOUNDATION PROBLEMS. CAN'T CONFRONT THE WITNESS WHICH IS THE

15:44:05 - Other: SCHWARTZ, C.
COMPUTER. OFFICER IS NOT AN EXPERT ON HOW THE MACHINE IS MAINTAINED. OBJECT

15:44:33 - Other: SCHWARTZ, C.
TO FINGERPRINT EVIDENCE.

15:44:43 - Add Ins: Verharen, Art
DOCUMENT IS GOING TO BE HEARSAY. HAVE A FINGERPRINT FROM A BUTANE CAN IN THE

15:45:09 - Add Ins: Verharen, Art
HOUSE. JUST WANT TO COMPARE THESE TWO PRINTS. HAVE A FINGERPRINT EXPERT

15:45:38 - Add Ins: Verharen, Art
COMING TOMORROW TO TESTIFY.

15:45:55 - Other: SWARTZ, C.
COMPUTER EVIDENCE TESTIMONIAL. NO WAY TO CROSS EXAMINE THIS DEPUTY.

15:46:47 - Judge: Carey, George D

15:47:06 - Other: SWARTZ, C.
THIS WITNESS TOOK THE PRINTS OF MR. GOSCH. THE DATA IS ENTERED BY SOMEONE

15:48:21 - Other: SWARTZ, C.
ELSE. THIS WITNESS DID NOT ENTER THE INFORMATION.

15:49:04 - Judge: Carey, George D
THE WITNESS WILL HAVE TO IDENTIFY THE DEF IN THE COURTROOM. BRING IN THE

15:51:11 - Operator
Stop recording: (Off Record)

15:51:35 - Operator
Recording:

15:51:35 - Record
Gosch, Kirk

15:51:38 - Add Ins: Verharen, Art
IF WITNESS CAN'T IDENTIFY THE DEF, WILL THE COURT FIND THE CARD NOT

15:52:09 - Add Ins: Verharen, Art
ADMISSABLE.

15:52:40 - Judge: Carey, George D
JURY PRESENT AND IN PLACE.

15:53:09 - Other: STONE, DEPUTY JOHN ARTHUR
HAVE THE PERSON WE PRINT IDENTIFY THE CONTENTS OF INFORMATION. PA DX

15:53:56 - Other: STONE, DEPUTY JOHN ARTHUR
MY INITIALS AND SIGNATURE ARE ON THE PRINT CARD. 1-6-06 I DID PRINT CARD.

15:54:34 - Other: STONE, DEPUTY JOHN ARTHUR
WAS WORKING IN BOOKING. WIPE THE DEFS HAND WITH A YELLOW RAG BEFORE MAKING

15:55:55 - Other: STONE, DEPUTY JOHN ARTHUR
THE PRINTS. RECOGNIZE THE DEF IN THE COURTROOM. VERIFY THATS HIM. MR GOSCH

15:56:38 - Other: STONE, DEPUTY JOHN ARTHUR
WAS THERE WHEN I GENERATED THE PRINT CARD. WE BOTH SIGNED IT.

15:57:28 - Add Ins: Verharen, Art
MOVE TO ADMIT 8 D.

15:58:00 - Other: STONE, DEPUTY JOHN ARTHUR
DA CRX THAT'S THE PRINT CARD I GENERATED.

15:58:59 - Judge: Carey, George D

ADMIT PLT EXHIBIT 8D.

15:59:30 - Other: STONE, DEPUTY JOHN ARTHUR
DA CRX DON'T KNOW IF MR GERRARD WAS FINGERPRINTED THAT NIGHT. DON'T

16:01:17 - Other: STONE, DEPUTY JOHN ARTHUR
KNOW IF MR CAPELLO WAS PRINTED THAT NIGHT.

16:01:31 - Judge: Carey, George D
EXCUSE WITNESS

16:01:41 - Add Ins: Verharen, Art
CALL DEPUTY MCFARLAND.

16:02:25 - Other: MACFARLANE, DEPUTY DIANE
PA DX DEPUTY OVER 10 YEARS. DETENTION DEPUTY. TAKE FINGERPRINTS.

16:02:53 - Other: MACFARLANE, DEPUTY DIANE
WENT TO POST. HAVE A COMPUTER GENERATED FINGERPRINT MACHINE. FINGER PRINT

16:03:50 - Other: MACFARLANE, DEPUTY DIANE
CARD IS GENERATED. HAS PERSONAL INFORMATION OF THE DEFENDANT ON IT. EXHIBIT

16:04:35 - Other: MACFARLANE, DEPUTY DIANE
PLT 8C, DEF REVIEWS. HAS MY NAME AND RADIO NUMBER ON THE CARD. GENERATED ON

16:05:19 - Other: MACFARLANE, DEPUTY DIANE
12-2-04. I WAS WORKING ON THAT SHIFT. CARD WAS MADE AT THE KOOTENAI COUNTY

16:05:59 - Other: MACFARLANE, DEPUTY DIANE
JAIL.

16:06:51 - Other: SWARTZ, C.
MOVE TO STRIKE.

16:07:09 - Other: MACFARLANE, DEPUTY DIANE
CARD WAS PRODUCED ON THAT DAY. DON'T RECOGNIZE THE INITIALS ON THE CARD. THE

16:07:57 - Other: MACFARLANE, DEPUTY DIANE
CARD SAYS THEIR MR GOSCH'S PRINTS.

16:08:58 - Other: SWARTZ, C.
DA CRX

16:09:14 - Other: SWARTZ, C.
MOVE THAT THAT COMMENT BE STRIKEN. DA CRX

16:09:46 - Other: MACFARLANE, DEPUTY DIANE

16:09:52 - Judge: Carey, George D
EXCUSE THE WITNESS.

16:10:04 - Add Ins: Verharen, Art
DAVID SINCERBEAUX MY NEXT WITNESS.

16:11:54 - Judge: Carey, George D
WILL LET HIM TESTIFY NOW. BOTH PARTIES AGREE.

16:12:30 - Add Ins: Sincerbeaux, David
PA DX WORK FOR ISP FORENSIC LAB. SCIENTIST IN FORENSICS. TEST

16:13:14 - Add Ins: Sincerbeaux, David
FOR CONTROLLED SUBSTANCES. TAKE THE WEIGHT OF THE SUBSTANCE. DON'T WEIGH

16:14:18 - Add Ins: Sincerbeaux, David
ANY PACKAGING. TEST THE SUBSTANCE. DESCRIBES THE TESTING PROCEDURE. THE

16:15:19 - Add Ins: Sincerbeaux, David
ACTIVE INGREDIENT IN MARIJUANA. DO THREE TESTS. COCAINE DONE TOTALLY

16:15:53 - Add Ins: Sincerbeaux, David
DIFFERENT. RUN ON A GCMS INSTRUMENT. KNOW WHAT HONEY OIL OR HASH OIL IS.

16:16:37 - Add Ins: Sincerbeaux, David
EXPLAINS. HAVE TESTED FOR HONEY OIL. LOOK FOR THC IN IT. THC IS FOUND ON THE

16:19:01 - Add Ins: Sincerbeaux, David

OUTSIDE OF THE LEAF. BUTANE IS USED TO EXTRACT THE THC. HONEY OIL IS
16:21:04 - Add Ins: Sincerbeaux, David
CONVERTED FROM MARAJUANA. TAKING THC FROM THE PLANT IS AN EXTRACTION. USE A
16:22:48 - Add Ins: Sincerbeaux, David
ANALYTICAL SCALE. THEY ARE CERTIFIED SCALES. GET CALIBRATED EVERY YEAR., WE
16:23:23 - Add Ins: Sincerbeaux, David
HAVE A SET OF WEIGHTS WE CALIBRATE WITH EVERY MONTH. USE WEIGHT BOATS,
16:24:03 - Add Ins: Sincerbeaux, David
PLASTIC DISHES. WEIGH BOATS ARE DISPOSABLE AND ONLY USED ONCE. HAVE RUN
16:24:48 - Add Ins: Sincerbeaux, David
ACROSS DRAGONS BLOOD. HAD TO DO RESEARCH TO FIGURE OUT WHAT IT IS.
16:25:50 - Add Ins: Taylor, Ann
- OBJECT TO FOUNDATION AND RELEVANCE.
16:26:04 - Add Ins: Sincerbeaux, David
IT'S ORGANIC MOLACULES. COMES IN TWO DIFFERENT FORMS. IS SOLD AS OPIUM AND JS
16:27:03 - Add Ins: Sincerbeaux, David
IN MARAJUANA. EVIDENCE TECHNIANS ONLY ONES THAT HAVE ACCESS TO THE
16:28:18 - Add Ins: Sincerbeaux, David
EVIDENCE. USE PACKING TAPE TO SEAL THE EVIDENCE. PUT MY INITIALS ON THE
16:29:06 - Add Ins: Sincerbeaux, David
PACKAGE. CHAIN OF CUSTODY ON THE FRONT OF THE ENVELOPE. PA DX
16:30:08 - Add Ins: Sincerbeaux, David
SHOWS SOME OF THE EVIDENCE TO WITNESS. PLT EXHIBIT 1B, 3A, 12B, 13A-C, 14A.
16:32:26 - Add Ins: Sincerbeaux, David
WITNESS IDENTIFIES EXHIBITS. 1B WAS ANALIZED 2-3-2006. REMAINING EXHIBITS
16:33:23 - Add Ins: Sincerbeaux, David
WERE ANALYZED 1-18-2005. RECIEVED THESE FROM AN EVIDENCE TECHNIAN. 1B ,
16:34:17 - Add Ins: Sincerbeaux, David
BAG ITSELF HAD RESIDUE. TOOK ABOUT HALF THE SAMPLE AND TESTED IT. RAN ON THE
16:34:45 - Add Ins: Sincerbeaux, David
GCMS. DIDN'T WEIGH IT BECAUSE IT WAS RESIDUE. 13A-C , HAD WEIGHABLE AMOUNTS,
16:35:40 - Add Ins: Sincerbeaux, David
WEIGHED THEM. FOUND THE PRESENCE OF COCAINE. WEIGHED EACH ONE SEPERATELY .
16:36:28 - Add Ins: Sincerbeaux, David
FOLLOWED USUAL PROCEDURE. ALL 4 CONTAIN COCAINE. START WITH 1B AND WRITE WHAT
16:37:34 - Add Ins: Sincerbeaux, David
THE SUBSTANCE IS.
16:38:00 - Add Ins: Taylor, Ann
OBJECT TO WRITING ON THE EVIDENCE BAGS. HAVEN'T BEEN ADMITTED.
16:38:41 - Add Ins: Sincerbeaux, David
PA DX. WRIT E COCAINE ON THEM AND THE AMOUNTS. 13A 139 GRAMS OF
16:39:29 - Add Ins: Sincerbeaux, David
COCAINE. 13B 26.88 GRAMS, ALSO COCAINE. 13C 3.19 GRAMS, ALSO COCAINE. TOTAL
16:40:12 - Add Ins: Sincerbeaux, David
WEIGHT OF THE COCAINE IS 169.11 GRAMS. 3A AND 14A, DESCRIBES THE PROCEDURE OF
16:41:29 - Add Ins: Sincerbeaux, David
THE ANALYSIS. 14A TOOK THE WEIGHT OF THE MATERIAL IN THE BAG. DID 2 TESTS. 3A
16:42:23 - Add Ins: Sincerbeaux, David
A RESIDUE IN A VILE. RAN ON GCMS. CAME BACK THC. 3A CONTAINS MARAJUANA. 14A
16:43:40 - Add Ins: Sincerbeaux, David
ALSO MARAJUANA. 3A IS HONEY OIL OR HASH OIL..14A I USED A LARGER WEIGH BOAT

16:44:54 - Add Ins: Sincerbeaux, David
ON A LARGER SCALE. IT WEIGHED 221.8 GRAMS OF MARAJUANA.

16:46:05 - Add Ins: Taylor, Ann
OBJECT

16:46:10 - Judge: Carey, George D
OVERRULED

16:46:17 - Add Ins: Sincerbeaux, David
COMES OUT TO 7.8 OUNCES. 12B , TOOK THE WEIGHT AND DID A COLOR TEST. DID AN

16:47:20 - Add Ins: Sincerbeaux, David
EXTRACT. DID NOT CONTAIN A CONTROLLED SUBSTANCE. IT WAS DRAGONS BLOOD.

16:47:58 - Judge: Carey, George D
STRIKE THAT LAST COMMENT ABOUT DRAGONS BLOOD.

16:48:16 - Add Ins: Sincerbeaux, David
PA DX CHECKS THE EXHIBITS AND VERIFIES THE PROPER CHAIN OF ANALYSIS

16:49:07 - Add Ins: Sincerbeaux, David
WAS USED.

16:49:14 - Add Ins: Sincerbeaux, David
DA CRX HAVE NO IDEA WHO THESE SUBSTANCES BELONG TO.

16:49:48 - Judge: Carey, George D
EXCUSES THE WITNESS. EXCUSES JURORS FOR THE EVENING. INSTRUCTS JURORS NOT TO

16:51:18 - Judge: Carey, George D
READ THE CDA PRESS UNTIL THE CASE IS OVER WITH. ADMONISHES THE JURY. RETURN

16:52:20 - Judge: Carey, George D
AT 1:30 PM.

16:52:36 - Operator
Stop recording: (On Recess)

16:53:10 - Operator
Recording:

16:53:10 - Record
Gosch, Kirk

16:53:12 - Judge: Carey, George D

16:53:32 - Other: SWARTZ, C.
THINK DEPUTY MACFARLANES TESTIMONY SHOULD BE STRUCK FROM THE RECORD. 404 B

16:54:06 - Other: SWARTZ, C.
BAD ACT. ASK TO INSTRUCT THE JURY TO DISMISS THE TESTIMONY.

16:54:26 - Add Ins: Verharen, Art
2 LABS USED FOR THE PRINT CARDS. DID DETERMINE IT'S THE SAME PERSON.

16:55:24 - Judge: Carey, George D
HAVE 3 SETS OF PRINTS.

16:55:37 - Add Ins: Verharen, Art
LATENT PRINT AND MACFARLANE PRINT THE SAME. COMPARED THE TWO PRINT CARDS.

16:56:20 - Add Ins: Verharen, Art
HAVE THE LATENT PRINT AND THE STONE CARD AND MACFALANE CARD. SAME

16:57:02 - Add Ins: Verharen, Art
FINGERPRINTS. ARGUES THE PRINT CARDS.

16:57:49 - Judge: Carey, George D
LATENT AND MACFARLANE THE SAME. MACFARLANE AND THE STONE CARD THE SAME.,

16:58:33 - Other: SWARTZ, C.
FOUNDATION PROBLEMS. 404 B EVIDENCE WASN'T NOTICED UP. ARGUES 404 B PROBLEM.

16:59:31 - Other: SWARTZ, C.
SHOULD BE STRICKEN AND NOT USED.

16:59:45 - Add Ins: Verharen, Art
NOT HIDING ANYTHING CARDS THE SAME.
17:00:21 - Judge: Carey, George D
QUESTION TO DETERMINE IF A AND C CAME FROM THE SAME PLACE. WILL LET THE
17:02:25 - Judge: Carey, George D
EVIDENCE IN. WILL GIVE THE JURY APPROPRIATE INSTRUCTION. HAVING FINGERPRINTS
17:03:17 - Judge: Carey, George D
TAKEN IS NOT A BAD ACT.
17:03:38 - Add Ins: Taylor, Ann
HAVE ANOTHER ISSUE WE'LL DISCUSS TOMORROW.
17:03:57 - Judge: Carey, George D
DON'T KNOW WHAT HAPPENED. DON'T KNOW WHAT WAS PRESENTED.
17:05:08 - Add Ins: Verharen, Art
I CALLED MY ASSISTANT TO GET A TAPE OF THAT HEARING. ORDER A COPY OF THE
17:06:14 - Add Ins: Verharen, Art
TAPE. ANOTHER HEARING THE SAME DAY AT 2:30.
17:07:59 - Operator
Stop recording:

Case ID: 0002

Case number: CR-2005-00403
Plaintiff:
Plaintiff Attorney:
Defendant: Gosch, Kirk
Previous audio and annotations can be found in case: 0001
Additional audio and annotations can be found in case: 0003.
Co-Defendant(s):
Pers. Attorney:
State Attorney:
Public Defender:

Day 2 7-26-06

2006/07/26

13:12:23 - Operator
Recording:
13:12:23 - Recall
Gosch, Kirk
13:12:33 - Judge: Carey, George D
CALLS CASE. ALL PRESENT. JURY TRIAL, DAY TWO 9-26-06. LISTENED TO THE TAPE
13:13:14 - Judge: Carey, George D
THIS MORNING. DID SAY THEIR IS 4 COUNTS.
13:14:36 - Add Ins: Taylor, Ann
WRITTEN DOCUMENT ONLY HAS 2 COUNTS ON IT. LEGAL PROBLEMS INVOLVED. JUST FOUND
13:15:44 - Add Ins: Taylor, Ann
THE MISTAKE WHILE YOU WERE INSTRUCTIING THE JURORS. THE PLEA AGREEMENT SAYS
13:16:58 - Add Ins: Taylor, Ann
HE WOULD PLEA TO CHARGES OF NOT TRAFFICKING.
13:17:18 - Add Ins: Verharen, Art

DID SOME RESEARCH THIS MORNING. 348 OF AN OPINION IN ANOTHER CASE I FOUND.

13:18:17 - Add Ins: Verharen, Art

QUOTES THAT DECISION. IN OUR CASE YOU HAVE AN AMENDED COMPLAINT THAT WAS

13:19:15 - Add Ins: Verharen, Art

FILED BEFORE THE PRELIMINARY HEARING. ALSO HAVE THE WRITTEN GUILTY PLEA THAT

13:19:59 - Add Ins: Verharen, Art

WAS FILED ON ALL FOUR CHARGES THAT THE DEFENDANT SIGNED.

13:20:36 - Other: SWARTZ, C.

QUOTES THE SAME CHARGE ART RESEARCHED. THIS IS A CONSTITUTIONAL ISSUE. WAIVED

13:21:25 - Other: SWARTZ, C.

HIS RIGHT. THIS ERROR HAS A CONSTITUTIONAL ISSUE. IT'S A JURISDICTIONAL

13:22:33 - Other: SWARTZ, C.

ISSUE.

13:24:36 - Judge: Carey, George D

ONLY SIGNIFICANCE THAT THIS CASE HAS IS ABOUT A WAIVER. THE AMENDED COMPLAINT

13:26:42 - Judge: Carey, George D

WAS FILED PRIOR TO THE PRELIMINARY HEARING. ITS CLEAR THAT THERE WAS 4

13:27:18 - Judge: Carey, George D

CHARGES HE WAS WAIVING HIS PRELIMINARY HEARING ON. THE WRITTEN COMMITMENT WAS

13:27:40 - Judge: Carey, George D

SIGNED IN ERROR. NO QUESTION HE WAS WAIVING TO 4 CHARGES. THE JURY IS ALREADY

13:28:20 - Judge: Carey, George D

AWARE OF THE 4 CHARGES. MAXIMUM PUNISHMENT ON THE MARAJUANA CHARGES IS 5

13:29:22 - Judge: Carey, George D

YEARS. MAXIMUM ON THE COCAINE CHARGES IS LIFE IMPRISONMENT. IF ONLY CONVICTED

13:29:57 - Judge: Carey, George D

ON MARAJUANA CHARGE WE'LL DO A FULL INVESTIGATION. IF ACQUITTED , NO HARM , NO

13:30:29 - Judge: Carey, George D

FOUL. THIS IS THE FAIREST WAY TO PROCEED. WILL GO FORWARD ON THE CHARGES.

13:31:39 - Add Ins: Taylor, Ann

THERE WAS ALOT OF TESTIMONY ON THE DRAGONS BLOOD. MOVE FOR A MISTRIAL. MR.

13:32:33 - Add Ins: Taylor, Ann

VERHAREN STACKED ALL THE EVIDENCE IN FRONT OF THE JURY BEFORE A FOUNDATION

13:33:11 - Add Ins: Taylor, Ann

WAS LAYED.

13:33:16 - Add Ins: Verharen, Art

JURY HAD THE RIGHT TO KNOW WHAT THE SUBSTANCE WAS. THERE WAS A NUMBER OF

13:33:45 - Add Ins: Verharen, Art

EXIBITS. DON'T SEE ANY PREJUDICE TO THE DEFENDANT.

13:34:07 - Add Ins: Taylor, Ann

THE TESTIMONY WAS THAT THE DRAGONS BLOOD WAS ALWAYS A PART OF MARAJUANA. HAD

13:34:48 - Add Ins: Taylor, Ann

NO PLACE IN THIS TRIAL.

13:34:56 - Judge: Carey, George D

CONCERNED ABOUT THE VERY LARGE BAG OF MARAJUANA. DON'T THINK THE JURY WAS

13:35:39 - Judge: Carey, George D

PRESENTED WITH SOMETHING THAT WAS OF SIGNIFICANCE. I DID INSTRUCT THE JURY

13:36:26 - Judge: Carey, George D

THAT THE EVIDENCE STILL HAD TO BE TIED TO THE CASE. DENY THE MOTION FOR

13:36:46 - Judge: Carey, George D

MISTRIAL.

13:37:47 - Operator
Stop recording: (On Recess)

13:47:19 - Operator
Recording:
13:47:19 - Record
Gosch, Kirk

13:47:22 - Judge: Carey, George D
JURY PRESENT AND IN PLACE.

13:47:50 - Add Ins: Clemenson, Eric
PA DX SPECIAL AGENT WITH THE FBI. 9 YEARS. WORK WITH THE ISP ON A

13:48:21 - Add Ins: Clemenson, Eric
NUMBER OF CASES. ASSITED WITH A SEARCH WARRANT OFF RIM ROCK ROAD. I

13:49:18 - Add Ins: Clemenson, Eric
ACCOMPANIED THE ISP TO THE JAIL TO INTERVIEW MR. GOSCH. WAS WITH DETECTIVE

13:49:44 - Add Ins: Clemenson, Eric
MORGAN IN THE BOOKING AREA FOR THE INTERVIEW. HE WAS ADVISED OF HIS MIRANDA

13:50:28 - Add Ins: Clemenson, Eric
RIGHTS. MR GOSCH STATED HE DID NOT WANT THE INTERVIEW RECORDED.

13:51:16 - Judge: Carey, George D
COUNCIL APPROACHES THE BENCH.

13:51:35 - Add Ins: Clemenson, Eric
PA DX MR GOSCH SAID SOMETHING ABOUT MARAJUANA. WE TOLD HIM WE

13:52:09 - Add Ins: Clemenson, Eric
SEIZED 2 LARGE BAGS OF MARAJUANA. WE TOLD HIM IT WAS 1 POUND EACH. HE SAID

13:52:39 - Add Ins: Clemenson, Eric
THEY WERE 1/2 POUND EACH. MR GOSCH ASK WHAT HE COULD DO TO REDUCE THE AMOUNT

13:53:42 - Add Ins: Clemenson, Eric
OF TROUBLE HE WAS IN.

13:54:09 - Judge: Carey, George D
OBJECTION. COUNCIL APPROACHES THE BENCH.

13:54:42 - Judge: Carey, George D
WILL HAVE TO TAKE THIS UP WITHOUT THE PRESENCE OF THE JURY. JURY EXCUSED.

13:55:21 - Add Ins: Clemenson, Eric
PA DX MR GOSCH WAS INQUIRING HOW TO MITIGATE THE TROUBLE HE WAS IN.

13:55:51 - Add Ins: Clemenson, Eric
WE TOLD HIM HE COULD HELP US ON OTHER CASES. WE COULD ONLY RECOMMEND

13:56:29 - Add Ins: Clemenson, Eric
POTENTIAL SOLUTIONS. HE SAID HE COULD PROVIDE SOME INFORMATION, HE NEEDED TO

13:56:52 - Add Ins: Clemenson, Eric
THINK ABOUT.

13:57:18 - Other: SWARTZ, C.
MOVE FOR A MISTRIAL. THAT STATEMENT SAYS THE DAMAGE IS ALREADY DONE. ALSO AS

13:57:51 - Other: SWARTZ, C.
FOR A MISTRIAL BECAUSE OF THE HUMAN ERROR IN THE DOCUMENT. STRONGLY ADMIT

13:58:29 - Other: SWARTZ, C.
THIS SHOULD BE DECLARED A MISTRIAL.

13:58:49 - Add Ins: Verharen, Art
KNOWLEDGE OF THE CONTROLLED SUBSTANCES THAT WERE IN THE WHITE VEHICLE.

13:59:40 - Other: SWARTZ, C.
JURY KNOWS THE DEFENDANT WAS WILLING TO CO-OPERATE.

14:00:42 - Judge: Carey, George D

ASK THE COURT REPORTER TO GO BACK TO WHERE THE LAST TIME THE COUNCIL

14:01:11 - Judge: Carey, George D
APPROACHED THE BENCH. AN ISSUE WITH THE DOOR OPENING. COURT REPORTER READS

14:01:52 - Judge: Carey, George D
WHAT HAPPENED.

14:02:09 - Other: SWARTZ, C.
THERE WAS ALSO STATEMENTS THAT WERE MADE ABOUT WHAT WAS IN THE BAGS.

14:02:38 - Judge: Carey, George D
UNFORTUNATE WE HAD TAKEN THAT MATTER UP IN CHAMBERS. BEST RECOLLECTION IS

14:03:12 - Judge: Carey, George D
THERE WOULDN'T BE ANY TESTIMONY ON THAT QUESTION. DON'T THINK THE QUESTION

14:03:51 - Judge: Carey, George D
WOULD PREJUDICE THE JURY. DON'T THINK THERE'S GROUNDS FOR A MISTRIAL. DENY

14:04:38 - Judge: Carey, George D
THE MOTION FOR A MISTRIAL.

14:04:48 - Add Ins: Verharen, Art
MR GOSCH WAS ASK IF THE CHUNKY SUBSTANCE WAS HERION. HE SAID IT WASN'T .

14:05:39 - Judge: Carey, George D
STAY AWAY FROM THAT AREA. RETURN THE JURY. HAVE SUSTAINED THE OBJECTION.

14:08:06 - Judge: Carey, George D
INSTRUCTS THE JURY ON THE FINGERPRINT CARDS. NOT SHOWING THAT THE DEFENDANT

14:08:57 - Judge: Carey, George D
IS A BAD PERSON.

14:09:10 - Add Ins: Clemenson, Eric
DA CRX I DID ASSIST THE SEARCH. I REVIEWED THE AREA FOR PLAIN VIEW

14:09:45 - Add Ins: Clemenson, Eric
AREA. CAME ACROSS BRANDON CAPPELI. HE WAS HANDCUFFED TO DETAIN HIM. THAT WAS

14:10:29 - Add Ins: Clemenson, Eric
UNCOMFORTABLE WITH THE CUFFS BEHIND HIS BACK. WE CHANGED THE CUFFS TO THE

14:11:02 - Add Ins: Clemenson, Eric
FRONT. WE INFORMED HIM WE SAW HIM ASSISTING MR GOSCH MOVING STUFF. I WAS

14:11:44 - Add Ins: Clemenson, Eric
AWARE OF THE SEARCH EARLIER BECUASE I WAS INVOLVED IN THE CASE. MR. CAPPELI

14:12:16 - Add Ins: Clemenson, Eric
WAS ARRESTED.

14:12:21 - Judge: Carey, George D
EXCUSES WITNESS.

14:12:47 - Other: PARKER, RANDY
PA DX FORENSICS SCIENTIST WITH THE IDAHO STATE POLICE. I'M THE

14:13:40 - Other: PARKER, RANDY
SUPERVISOR FOR THE FINGERPRINT DIVISION. 3 LATENT PRINT EXAMINERS. BEEN WITH

14:14:27 - Other: PARKER, RANDY
ISP FOR A TOTAL OF 12 YEARS. REVIEWS EDUCATION. BEEN IN THE FINGERPRINT

14:15:32 - Other: PARKER, RANDY
BUSINESS SINCE 1994. WORKED FOR THE SALT LAKE CITY POLICE DEPT. REVIEWS

14:16:00 - Other: PARKER, RANDY
EMPLOYMENT. BELONG TO INTERNATIONAL ASSOCIATION FOR IDENTIFICATION. I'M C

14:16:31 - Other: PARKER, RANDY
ERTIFIED . I INSTRUCT NEW OFFICERS AT THE POST ACADEMY IN BOISE. BCI STANDS

14:17:28 - Other: PARKER, RANDY
FOR THE BUREAU OF CRIMINAL INVESTIGATION. FRICTION RIDGE SKIN IS FOUND ON

14:18:24 - Other: PARKER, RANDY
YOUR HANDS AND YOUR FEET. MAIN FUNCTION SO YOU CAN GRIP ITEMS. LATENT PRINT

14:18:49 - Other: PARKER, RANDY
MEANS HIDDEN OR UNSEEN. A KNOWN PRINT CAN BE DONE DIGITALLY. IF SOMEONE IS

14:20:17 - Other: PARKER, RANDY
ARRESTED IN IDAHO THEY GET FINGERPRINTED. LATENT PRINTS ARE PUT IN A SEALED

14:21:49 - Other: PARKER, RANDY
ENVELOPE. THREE LEVELS OF DETAIL IN FINGERPRINTS. EXPLAINS THE 3 LEVELS.

14:24:40 - Other: PARKER, RANDY
UNIQUENESS AND PERMANENCE ARE THE 2 MAIN FACTORS IN FINGERPRINTS. NOT

14:25:40 - Other: PARKER, RANDY
POSSIBLE TO HAVE 2 PEOPLE WITH THE SAME FINGERPRINTS. EXHIBIT 8 B. EXHIBIT 8

14:26:31 - Other: PARKER, RANDY
D HAS BEEN ADMITTED. 8C HASN'T. 8F AND 9G HAVEN'T BEEN ADMITTED. I REGOGNIZE

14:28:27 - Other: PARKER, RANDY
8 B FROM MY INITIALS AND THE DATE. ITS A LATENT LIFT CARD.

14:29:42 - Other: PARKER, RANDY
DA CRX I DON'T ENTER THE INFORMATION IN THE DATA BASE. ALL THE INFO I

14:30:08 - Other: PARKER, RANDY
GET COMES FROM THE BCI.

14:30:59 - Other: BERGER, DETECTIVE PAUL
PA DX DETECTIVE WITH THE ISP. FOUND BUTANE CANISTERS UNDER THE KITCHEN

14:31:35 - Other: BERGER, DETECTIVE PAUL
SINK. EXHIBIT 8A IS A BUTANE CONTAINER I FOUND UNDER THE SINK. SINK WAS IN THE

14:33:05 - Other: BERGER, DETECTIVE PAUL
KITCHEN AREA. KIRK GOSCH WAS IN THE KITCHEN. I LIFTED FINGER PRINTS OFF THE

14:33:32 - Other: BERGER, DETECTIVE PAUL
CONTAINER. USED BLACK FINGERPRINT DUST TO LIFT THE PRINT. PRINT WAS PLACED IN

14:34:23 - Other: BERGER, DETECTIVE PAUL
EVIDENCE AND SENT TO BOISE. RECOGNIZE EXHIBIT 8B. FINGERPRINT I LIFTED. SENT

14:35:18 - Other: BERGER, DETECTIVE PAUL
TO BOISE FOR FINGERPRINT IDENTIFICATION. SAME PRINT AS THE ONE I GOT FROM THE

14:36:18 - Other: BERGER, DETECTIVE PAUL
CANISTER UNDER THE SINK.

14:36:39 - Other: BERGER, DETECTIVE PAUL
DA CRX 3 OR 4 PRINTS WERE RECOVERED FROM THAT CAN.

14:37:05 - Add Ins: Verharen, Art
RECALL RANDY PARKER.

14:37:29 - Add Ins: Taylor, Ann
I THINK THE CAN IS LACKING IN FOUNDATION.

14:37:43 - Judge: Carey, George D
ADMIT 8 A.

14:39:55 - Other: PARKER, RANDY
PA DX RECALLS THIS WITNESS. I OBTAINED THE FINGERPRINT CARDS ON

14:40:31 - Other: PARKER, RANDY
10-5-05. I REQUESTED THEM. 8F AND 8G. I COMPARED THE PRINTS FROM THE CARDS.

14:41:47 - Other: SWARTZ, C.
I OBJECT

14:41:56 - Judge: Carey, George D
SEND OUT THE JURY.

14:42:42 - Other: SWARTZ, C.

OUR EXHIBIT LIST DOESN'T HAVE THESE EXHIBITS. NEED TO PROOF WHERE 8C CAME
14:43:17 - Other: SWARTZ, C.
FROM. HAVE NO CO-OPERATION AT ALL. NO MENTION OF 8C. NO WAY THIS WITNESS CAN
14:43:51 - Other: SWARTZ, C.
LAY FOUNDATION. HIGHLY PREJUDICIAL FOR MR. GOSCH. LACK OF FOUNDATION FOR 8C.
14:44:38 - Other: SWARTZ, C.
CAN'T ESTABLISH THE CHAIN OF COMMAND.
14:45:08 - Add Ins: Verharen, Art
THERE IS A POSITIVE COMPARISON. THE WITNESS COMPARED THE PRINT CARDS.
14:46:16 - Other: SWARTZ, C.
DON'T LIKE THE VERHERAN THEORY.
14:46:37 - Judge: Carey, George D
IT DOESN'T MATTER WHERE IT CAME FROM. MS MACFARLAND COULDN'T IDENTIFY THE
14:47:34 - Judge: Carey, George D
PRINT CARD SHE MADE UP. LET YOU CONTINUE WITH THE FOUNDATION.
14:49:56 - Judge: Carey, George D
GOOD CHANCES THE CASE WILL GO TO DELIBERATION TOMORROW.
14:50:26 - Operator
Stop recording: (On Recess)
15:02:03 - Operator
Recording:
15:02:03 - Record
Gosch, Kirk
15:02:06 - Judge: Carey, George D
15:02:20 - Other: SWARTZ, C.
EXHIBITS ARE STILL OPEN AND OUT IN THE OPEN FOR THE JURY TO SEE.
15:02:44 - Judge: Carey, George D
RETURN THE JURY. JURY PRESENT AND IN PLACE.
15:03:14 - Other: PARKER, RANDY
PA DX 8F AND 8C ARE SIMILAR. EACH FINGERPRINT PATTERN IS THE SAME.
15:03:42 - Other: PARKER, RANDY
FROM THE SAME PERSON. 8B IS THE LATENT FINGERPRINT. DID AN ANALYSIS ON THE
15:04:09 - Other: PARKER, RANDY
PRINT CARD 8F. CLARITY OF THE RIDGE DETAIL THE SAME. 8F AND 8C. 8C WOULD
15:04:48 - Other: PARKER, RANDY
HAVE BEEN DONE IN KOOTENAI COUNTY. 8F AND 8B I DID AN ANALYSIS ON 10-25. DID
15:05:32 - Other: PARKER, RANDY
AN ANALYSIS ON 8F AND 8G. DID IT BY THE REQUEST OF THE KOOTENAI COUNTY. 8G
15:06:05 - Other: PARKER, RANDY
AND 8D HAVE THE SAME RIDGE PATTERNS. DIFFERENCE BETWEEN 8D AND 8G. ONE WAS
15:06:40 - Other: PARKER, RANDY
WITH KOOTENAI AND ONE WAS DONE BY THE BCI. SECOND ANALYSIS USED 8F COMPARED
15:07:47 - Other: PARKER, RANDY
TO 8G. DIDN'T HAVE THE ORIGINAL LATENT PRINT IN MARCH. THEY ARE THE SAME
15:08:23 - Other: PARKER, RANDY
RIDGE DETAIL AND PATTERN. EXPLAINS PATTERN TYPES. LATENT PRINT ON 8B IS A
15:09:41 - Other: PARKER, RANDY
POSITIVE ID TO THE #10 FINGER. 8G AND 8F ARE THE SAME PERSON. MOVE TO ADMIT
15:11:04 - Other: PARKER, RANDY
8B THRU 8G.
15:11:46 - Other: SWARTZ, C.

OBJECTION. FOUNDATION HAS NOT BEEN ESTABLISHED.

15:12:03 - Judge: Carey, George D

ADMIT THE ITEMS.

15:15:57 - Other: PARKER, RANDY

PA DX SHOWS THE JURY THE FINGERPRINT CARD. SHOWS HIS COMPARISON.

15:16:43 - Other: PARKER, RANDY

PATTERN TYPE THE SAME. EXPLAINS THE FINGER PRINT CARDS. THERES 3 LEVELS OF

15:19:06 - Other: PARKER, RANDY

COMPARISON. MADE A LEVEL 3 IDENTIFICATION. DA CRX LATENT PRINTS

15:21:04 - Other: PARKER, RANDY

SHOW DEPOSITS OF SWEAT, DISTORTION AND DIRT. NEEDS SOME FORM OF PROCESSING TO

15:21:35 - Other: PARKER, RANDY

MAKE IT VISABLE. SKIN IS IMPERFECT. ITS PLIABLE AND IT MOVES. I'M CERTAIN

15:22:33 - Other: PARKER, RANDY

THESE PRINTS WERE MADE FROM THE SAME SOURCE. THIS LATENT PRINT CARD WAS TAKEN

15:23:22 - Other: PARKER, RANDY

FROM THE SCENE. 8C AND 8F ARE THE SAME PRINTS. EASIER TO COMPARE THE LATENT

15:25:28 - Other: PARKER, RANDY

PRINTS. TONER IN THE PRINT WILL MAKE ONE PRINT LIGHTER OR DARKER. 8F USED ON

15:27:08 - Other: PARKER, RANDY

MY ORIGINAL COMPARISON. COMPARED TO 8G. 8C AND 8D WERE SUBMITTED EARLIER.

15:27:57 - Other: PARKER, RANDY

COPIES FROM BCI WERE MORE CLEARER. CAN ONLY TEST PRINTS THAT ARE SENT TO ME.

15:29:14 - Other: PARKER, RANDY

WAS ONLY SENT ONE LATENT CARD.

15:29:43 - Other: PARKER, RANDY

PA RDX PRINT CARDS ARE THE SAME. NO DOUBT IN MY MIND.

15:31:34 - Other: BERGER, DETECTIVE PAUL

PA DX I DO NARCOTICS INVESTIGATIONS. HAVE A MASTERS CERTIFICATE IN

15:32:03 - Other: BERGER, DETECTIVE PAUL

POST. REVIEWS BACKGROUND AND TRAINING. HAVE DONE HUNDREDS OF INVESTIGATIONS.

15:33:20 - Other: BERGER, DETECTIVE PAUL

LOOK FOR PACKAGING MATERIALS. FIND RESIDUAL AMOUNTS OF DRUGS. FIND LARGE

15:33:47 - Other: BERGER, DETECTIVE PAUL

AMOUNTS OF CASH. FIND DRUG LEDGERS. HAVE CLIENTS NAMES IN THEM. MONEY THAT IS

15:34:25 - Other: BERGER, DETECTIVE PAUL

OWED TO THEM. TRAINING FOCUSES ON MARIJUANA. SMELLED MARIJUANA HUNDREDS OF

15:34:55 - Other: BERGER, DETECTIVE PAUL

TIMES. TYPICAL USER AMOUNT OF MARIJUANA GOES FROM OUNCES TO GRAMS. ONE OUNCE

15:36:02 - Other: BERGER, DETECTIVE PAUL

OF MARIJUANA GOES FOR DIFFERENT AMOUNTS. DEPENDS ON WHAT KIND OF MARIJUANA

15:36:43 - Other: BERGER, DETECTIVE PAUL

IT IS. RANGES FROM \$125.00 TO 275.00 PER OUNCE, COMES IN HEAT SEALED BAGS

15:37:46 - Other: BERGER, DETECTIVE PAUL

THAT ARE USUALLY GRADED. TO MAKE HONEY OIL YOU'LL FIND CANNING JARS AND

15:38:42 - Other: BERGER, DETECTIVE PAUL

BUTANE. WILL HAVE A STICKY SUBSTANCE IN THE JARS. THEY GRIND UP MARIJUANA AND

15:39:19 - Other: BERGER, DETECTIVE PAUL

PROCESS IT INTO HONEY OIL. FAMILIAR WITH COCAINE. CUTTING AGENTS USED IN

15:40:07 - Other: BERGER, DETECTIVE PAUL

CUTTING COCAINE. CALLED MSM. ITS A SUPPLEMENT THAT CAN BE USED FOR FATIGUE.

15:40:40 - Other: BERGER, DETECTIVE PAUL
HAS A SHINNYNESS TO IT. GET COCAINE IN CHUNK FORM. FAMILIAR WITH MARAJUANA.

15:41:28 - Other: BERGER, DETECTIVE PAUL
A GREEN LEAFY SUBSTANCE. HAVE HANDLED MARAJUANA BEFORE. I PARTICIPATED IN A

15:42:03 - Other: BERGER, DETECTIVE PAUL
GARBADGE SEARCH. GO THROUGH THE GARBAGE TO LOOK FOR EVIDENCE. 10:30 AM DID

15:42:40 - Other: BERGER, DETECTIVE PAUL
THE GARBADGE SEARCH. ACTED ON SOME INFORMATION. WENT WITH THE OWNER OF THE

15:43:13 - Other: BERGER, DETECTIVE PAUL
COMPLEX TO SEARCH THE GARBADGE. IT WAS LOCATED AT THE FRONT OF THE HOUSE.

15:44:21 - Add Ins: Taylor, Ann
OBJECT ON FOUNDATION.

15:44:39 - Judge: Carey, George D
COUNCIL APPROACHES THE BENCH.

15:45:21 - Other: BERGER, DETECTIVE PAUL
PA DX SAW MR MOORE LOADING THE GARBADGE. GOT HAULED TO THE CITY

15:46:04 - Other: BERGER, DETECTIVE PAUL
HALL. THERE THE ENTIRE TIME THE GARBADGE WAS GONE THROUGH. OBSERVED

15:46:43 - Other: BERGER, DETECTIVE PAUL
EVERYTHING THAT CAME OUT OF THE GARBADGE. IN THE GARBADGE WE FOUND HEAT

15:47:25 - Other: BERGER, DETECTIVE PAUL
SEALED BAGS. OVEN BAKED BAGS. THEY SMELLED OF PROCESSED MARAJUANA. BAGGIES

15:47:48 - Other: BERGER, DETECTIVE PAUL
WITH WHITE RESIDUE. BROKEN KERR BOTTLES. HAND WRITTEN NOTE SAID THE HONEY OIL

15:48:44 - Other: BERGER, DETECTIVE PAUL
NEEDED TO BE CLEANED OFF THE STOVE WITH ALCOHOL. EXHIBIT 1A IS WHAT WE GOT

15:49:13 - Other: BERGER, DETECTIVE PAUL
OUT OF THE GARBADGE. MOVE TO ADMIT 1A.

15:50:00 - Add Ins: Taylor, Ann
OBJECT ON FOUNDATION. DETECTIVE WASN'T PRESENT WHEN THE GARBADGE WAS BEING

15:50:39 - Add Ins: Taylor, Ann
DELVERED. NOT PROPER FOUNDATION.

15:50:52 - Judge: Carey, George D
WILL ADMIT. 1A.

15:52:29 - Other: BERGER, DETECTIVE PAUL
PA DX 1:30 PM WHEN WE GOT TO RIM ROCK ROAD. WHEN WE ARRIVED WE

15:53:30 - Other: BERGER, DETECTIVE PAUL
ENTERED THROUGH DRIVEWAY AREA.. I WAS YELLING POLICE SEARCH WARRANT. ONE

15:54:02 - Other: BERGER, DETECTIVE PAUL
PERSON OUTSIDE. SOMEONE WAS IN THE KITCHEN. I COULD HEAR GLASS BREAKING

15:54:28 - Other: BERGER, DETECTIVE PAUL
INSIDE . WE ENTERED IN THE RESIDENCE. MR. GOSCH WAS TRYING TO GET AWAY.

15:55:47 - Other: BERGER, DETECTIVE PAUL
SHOWS.

15:55:48 - Judge: Carey, George D
ADMIT PLTS EXHIBIT 16.

15:56:08 - Other: BERGER, DETECTIVE PAUL
PA DX DESCRIBES WHICH WINDOW HE SAW THE DEFENDANT IN . 2 PEOPLE IN

15:56:42 - Other: BERGER, DETECTIVE PAUL
THE HOME. MR GOSCH AND MR MCCORMICK. MR. CAPELLO ARRIVED IN A BLACK CHEROKEE.

15:57:14 - Other: BERGER, DETECTIVE PAUL

WAS A WHITE PICKUP AND WHITE SUZUKI ESTEEM. DESCRIBES INSIDE OF THE

15:58:15 - Other: BERGER, DETECTIVE PAUL
RESIDENCE. VERY SMALL LIVING QUARTERS. NOT MUCH OF ANYTHING IN THE HOUSE.

15:59:13 - Other: BERGER, DETECTIVE PAUL
THEY WERE MOVING OUT. I COLLECTED ALL THE EVIDENCE IN THE HOUSE. STARTED IN

15:59:36 - Other: BERGER, DETECTIVE PAUL
THE KITCHEN AREA. OBSERVED GLASS PIPES, LITTLE VILES WITH HONEY OIL. BROKEN

16:00:05 - Other: BERGER, DETECTIVE PAUL
GLASS IN THE SINK. FOUND A BONG. EXHIBITS 17 AND 18. 17 OVERALL VIEW OF THE

16:00:51 - Other: BERGER, DETECTIVE PAUL
KITCHEN. 18 OF THE STOVE AREA. BAGGIE OF GREEN LEAFY SUBSTANCE. MOVE TO ADMIT

16:01:21 - Other: BERGER, DETECTIVE PAUL
17 AND 18.

16:01:36 - Judge: Carey, George D
17 AND 18 ADMITTED.

16:01:50 - Other: BERGER, DETECTIVE PAUL
PA DX EXHIBIT 20 BROKEN JAR, 21 GLASS VILE OF AMBER LIQUID, 22

16:02:50 - Other: BERGER, DETECTIVE PAUL
ZIPLOCK BAG OF MARAJUANA. EXPLAINS WHATS IN THE PICTURES.

16:05:45 - Judge: Carey, George D
ADMIT PLT 19.

16:05:58 - Other: BERGER, DETECTIVE PAUL
PA DX EXPLAINS MORE PICTURES. I TOOK THE PHOTOS. MOVE TO ADMIT 25 AND

16:07:42 - Other: BERGER, DETECTIVE PAUL
26

16:07:44 - Judge: Carey, George D
ADMIT 25 AND 26

16:08:47 - Judge: Carey, George D
ADMIT PLT 24

16:08:57 - Other: BERGER, DETECTIVE PAUL
PA DX DESCRIBES PICTURES.

16:11:10 - Judge: Carey, George D
ADMIT 27-30

16:13:33 - General:
Time stamp

16:13:34 - General:
Time stamp

16:16:18 - Judge: Carey, George D
ADMIT 27-30, 7A, 6

16:16:51 - Other: BERGER, DETECTIVE PAUL
5A IS ZIP LOCK BAGGIES

16:18:07 - Judge: Carey, George D
5A ADMITTED

16:19:07 - Other: BERGER, DETECTIVE PAUL
5B EXHIBIT, MOVE TO ADMIT.

16:19:36 - Judge: Carey, George D
WILL TAKE THAT UP LATER ON.

16:19:47 - Other: BERGER, DETECTIVE PAUL
PA DX START WITH PLT 2. MARIJUANA BONG AND BROKEN PIPES. . 3B IS A

16:22:00 - Other: BERGER, DETECTIVE PAUL
VILE THAT WAS LOCATED ON THE STOVE. MOVE TO ADMIT 2 AND 3B.

16:22:39 - Add Ins: Taylor, Ann
OBJECT. ITS CUMULATIVE. 3B OBJECT ALSO. NO FOUNDATION.

16:23:05 - Judge: Carey, George D
ADMIT 2

16:23:52 - Judge: Carey, George D
3B NOT ADMITTED

16:24:02 - Other: Taylor, Ann
3C IS THE BROKEN KERR JAR. 3D WAS LOCATED IN THE TRASH.

16:25:17 - Add Ins: Taylor, Ann
OBJECT TO 3B AND 3C

16:25:37 - Add Ins: Verharen, Art
ALOT OF EVIDENCE COLLECTED. NOT ALL TESTED.

16:26:30 - Judge: Carey, George D
3B AND 3C WILL BE DEALT WITH LATER. COUNCIL APPROACHES THE BENCH.

16:27:51 - Other: BERGER, DETECTIVE PAUL
PA DX PHOTOS 31-33. DESCRIBES PHOTOS. PHOTOS I TOOK. MOVE TO ADMIT

16:29:22 - Other: BERGER, DETECTIVE PAUL
31-33

16:29:42 - Judge: Carey, George D
31-33 ADMITTED

16:29:51 - Other: BERGER, DETECTIVE PAUL
PA DX DESCRIBES PHOTOS OF THE CARS. MOVE TO ADMIT 34 AND 35

16:31:42 - Judge: Carey, George D
34 AND 35 ADMITTED

16:33:50 - Other: BERGER, DETECTIVE PAUL
TOOK PHOTOS OF JARS CAUSE SAME AS THE ONES IN THE HOUSE AND IN THE TRASH. PL

16:34:20 - Other: BERGER, DETECTIVE PAUL
36 AND 38 PHOTOS., EXPLAINS. PHOTOS I TOOK. MOVE TO ADMIT 36 AND 38.

16:35:42 - Judge: Carey, George D
COUNCIL APPROACHES THE BENCH. WILL ADMIT, BLANK OUT A PORTION OF THE WALLET.

16:37:03 - Judge: Carey, George D

16:39:21 - Other: BERGER, DETECTIVE PAUL
PA DX EXPLAINS 39 AND 40. MOVE TO ADMIT.

16:39:44 - Add Ins: Taylor, Ann
OBJECTION ON 40

16:39:53 - Judge: Carey, George D
ADMIT 39. HOLD OFF ON 40.

16:41:09 - Other: BERGER, DETECTIVE PAUL
PA DX EXPLAINS 41 PICTURE, 42 PICTURE, 43 PICTURE, 44 PICTURE OF

16:42:26 - Other: BERGER, DETECTIVE PAUL
MARIJUANA. TAKEN AT MY OFFICE. WEIGHED EACH BAGGIE ON AN ELECTRONIC SCALE.

16:43:40 - Other: BERGER, DETECTIVE PAUL
WROTE THE WEIGHT OF EACH BAGGIE ON THE BAGGIE. MOVE TO ADMIT 41-44.

16:44:31 - Add Ins: Taylor, Ann
OBJECT TO 41-44

16:44:51 - Other: BERGER, DETECTIVE PAUL
PA DX EXPLAINS 47. MONEY IN CUPBOARD LAYED OUT. TAKEN AT MY OFFICE.

16:46:46 - Judge: Carey, George D
WILL BREAK FOR THE EVENING. EXPLAINS THE DELIBERATION PROCESS. WILL RETURN AT

16:47:45 - Judge: Carey, George D
9:00 AM TOMORROW. ADMONISHES JURY.

16:50:42 - Operator
Stop recording: (On Recess)

16:59:08 - Operator
Recording:

16:59:08 - Record
Gosch, Kirk

16:59:11 - Judge: Carey, George D
BACK ON RECORD. DISCUSSING THE EXHIBITS THAT WERE OBJECTED TO. 5 B.

17:00:35 - Add Ins: Taylor, Ann
OBJECT TO 5B BECAUSE IT'S VERY PREJUDICIAL. SECOND ONE IS A PRICE QUOTE FROM

17:01:23 - Add Ins: Taylor, Ann
LES SCHWAB. OBJECT TO THAT. OTHER APPEARS TO BE A LETTER. OBJECT ON HEARSAY

17:02:01 - Add Ins: Taylor, Ann
AND FOUNDATION. SAME WITH THE NEXT PAGE. CREDIT REPORT, THATS HEARSAY AND

17:02:40 - Add Ins: Taylor, Ann
PREJUDICIAL. SAME WITH NEXT PAGE. CRICKET CONTRACT DOCUMENT. HEARSAY. PAPER

17:03:22 - Add Ins: Taylor, Ann
WITH NAME AND PHONE NUMBER. PAYMENT RECEIPT. MISC LOOSE PAPERWORK. OBJECT ON

17:05:25 - Add Ins: Taylor, Ann
ALL OF IT.

17:06:01 - Add Ins: Verharen, Art
PAPERWORK WAS FOUND IN A CUPBOARD IN THE KITCHEN.

17:06:41 - Judge: Carey, George D
REVIEWS THE DOCUMENTS. SKIP FRASER LETTER. WON'T LET THAT BE ADMITTED.

17:09:22 - Add Ins: Verharen, Art
ATTEMPTING TO ADMIT EVERYTHING THAT WAS IN THAT BAG.

17:09:42 - Judge: Carey, George D
SYLVAN FURNITURE RECEIPT NOT ADMISSABLE. BLANK CHECK ISSUE OF OWNERSHIP. PINK

17:10:32 - Judge: Carey, George D
POST IT WITH PHONE NUMBER NOT HELPFUL. SALES INVOICE FROM CAR TOYS NOT

17:12:39 - Judge: Carey, George D
ADMISSABLE. CRICKET MADE OUT TO KIRK GOSCH. SHOWS OWNERSHIP. REVIEWS ALL

17:13:56 - Judge: Carey, George D
DOCUMENTS. 2 LETTERS FROM MR. MOORE HAVE PROBATIVE VALUE. CAN BE REDACKED.

17:21:37 - Judge: Carey, George D
OVERDUE RENT. LETTER TO TERMINATE TENANCY DOESN'T LOOK LIKE IT CAN REDACKTED.

17:22:34 - Judge: Carey, George D
WON'T BE ADMITTED.

17:22:47 - Add Ins: Verharen, Art
MR. GOSCH HAD A ROOMMATE. SAYS MR. CAPPELLO WAS LIVING THERE AND THOSE WERE

17:23:17 - Add Ins: Verharen, Art
HIS DRUGS. THINK THEY'RE HIGHLY PROBAT IVE.

17:23:51 - Other: SWARTZ, C.
THERE ARE CUMMALATIVE. THEY WOULD BE HEARSAY STATEMENTS.

17:24:14 - Judge: Carey, George D
RULING WILL STAND. CAN REDACT THE LETTERS. WILL BE ADMITTED. CREDIT REPORT

17:25:37 - Judge: Carey, George D
IS PREDUDICLE. PROBATIVE VALUE. WILL ADMIT PRAIRIE ANIMAN HOSPITAL RECEIPT,

17:26:19 - Judge: Carey, George D
CRICKET AUTHORIZATION, MISC PAPERWORK WILL BE ADMITTED. IF ITS HEARSAY. DON'T

17:28:03 - Judge: Carey, George D

WANT TO RULE IN ADVANCE.

17:28:44 - Add Ins: Verharen, Art

CAN PUT IT IN THE ENVELOPE AND CALL IT 5C.

17:29:03 - Judge: Carey, George D

WILL PUT BACK IN THE 5 B ENVELOPE. PUT THE ONES NOT ADMITTED AS 5C.

17:31:53 - Add Ins: Taylor, Ann

RESULTS OF NICK TEST NOT ADMISSABLE. 41 IS ADITTED.

17:32:57 - Judge: Carey, George D

ADMIT 41. ADMIT 43, BLACK OUT SECTION.

17:35:50 - Add Ins: Verharen, Art

LAB DIDN'T TEST EACH INDIVIDUAL BAG. ALSO HAVE CONFESSION BY DEFENDANT THAT

17:36:28 - Add Ins: Verharen, Art

IT IS MARIJUANA. WRITING ON THE BAGS IS AN OUT OF COURT STATEMENT. PLT 44 CAN

17:39:02 - Add Ins: Verharen, Art

BE REDACTED.

17:39:27 - Judge: Carey, George D

DRAGONS BLOOD PICTURE. DON'T THINK IT WILL BE HELPFUL TO THE JURY. CHEMIST

17:40:24 - Judge: Carey, George D

TESTIMONY WAS HE SEES THIS STUFF CONNECTED TO MARAJUANA.

17:41:13 - Add Ins: Verharen, Art

ARGUES THE PICTURE OF THE DRAGONS BLOOD.

17:41:52 - Other: SWARTZ, C.

HAVE SEVERAL MOTIONS. WANT TO ASK FOR A MISTRIAL AGAIN. DRAGONS BLOOD IS

17:42:20 - Other: SWARTZ, C.

IRRELIVANT. NOT CONNECTED WITH THE MARAJUANA USE.

17:43:11 - Judge: Carey, George D

WILL NOT ADMIT THE EVIDENCE. 40 AND 42 NOT ADMITTED. JARS HAVE SOME PROBATIVE

17:46:12 - Judge: Carey, George D

VALUE. NONE OF THE CONTENTS HAVE BEEN TESTED. ADMIT 3B, 3C, AND 3D. COURT

17:50:50 - Judge: Carey, George D

ADJOURNED.

17:50:58 - Operator

Stop recording:

2006/07/27

09:04:30 - Operator

Recording:

09:04:30 - Record

Gosch, Kirk

09:04:34 - Judge: Carey, George D

CALLS CASE. STATE HAS SOME PHOTOS THAT ARE REDACKED. ALL PRESENT. JURY TRIAL.

09:05:04 - Judge: Carey, George D

09:06:31 - Judge: Carey, George D

ADMIT PL EXHIBITS 40, 43, 5B. COUPLE OF EXHIBITS WERE ADMITTED LAST NIGHT

09:07:59 - Judge: Carey, George D

AFTER THE JURY WENT HOME. DET BERGER RETURNS TO THE STAND.

09:08:45 - Other: BERGER, DETECTIVE PAUL

PA DX EXHIBITS 39, 40, 41 TO BE EXPLAINED. #39 WHITE

09:09:56 - Other: BERGER, DETECTIVE PAUL

BAG, 40 CONTENTS OF BAG, 43 ZIP LOCK BAGGIE 3 PKGS OF COCAINE FROM WHITE

09:10:45 - Other: BERGER, DETECTIVE PAUL

SUZUKI. 41 BAGGIE OF GREEN LEAFY SUBSTANCE. ALL ZIP LOCK BAGGIES WERE INSIDE

09:11:43 - Other: BERGER, DETECTIVE PAUL
THE WHITE BAG. 14C WHITE BAG THAT ALL THE ZIP LOCK BAGS WERE IN. MOVE TO

09:12:23 - Other: BERGER, DETECTIVE PAUL
ADMIT 14C

09:12:28 - Judge: Carey, George D
ADMIT 14C

09:13:24 - Other: BERGER, DETECTIVE PAUL
PA DX MOVE TO ADMIT 13B.

09:13:47 - Add Ins: Taylor, Ann
OBJECT BECAUSE OF THE LABEL.

09:14:02 - Judge: Carey, George D
NEED TO REDACK THE DESCRIPTION . ADMIT THE EXHIBIT.

09:14:44 - Other: BERGER, DETECTIVE PAUL
PA DX 14B IS A TITLE RELEASE THAT WAS IN THE GLOVE BOX OF THE

09:15:47 - Other: BERGER, DETECTIVE PAUL
CAR. MOVE TO ADMIT 14D.

09:16:12 - Add Ins: Taylor, Ann
OBJECT BECAUSE OF THE SIGNATURE ON THE DOCUMENT. HEARSAY

09:16:35 - Judge: Carey, George D
14 D WILL BE ADMITTED.

09:17:12 - Other: BERGER, DETECTIVE PAUL
PA DX WHEN SENT TO THE STATE LAB THERE IS AN EVIDENCE STICKER ON

09:18:54 - Other: BERGER, DETECTIVE PAUL
THE BAG. DOES GET ALTERED ALITTLE AFTER COMING BACK BECAUSE IT HAS BEEN

09:19:24 - Other: BERGER, DETECTIVE PAUL
OPENED FOR TESTING. PA HAS 6 NEW EXHIBITS. RECOGINIZE THE EXHIBITS. THEY HAVE

09:20:18 - Other: BERGER, DETECTIVE PAUL
MY INITIALS ON THEM FROM WHEN I MARKED THEM. I PROCESSED THE EVIDENCE. 14A

09:20:52 - Other: BERGER, DETECTIVE PAUL
WAS OBTAINED FROM A ZIP LOCK BAG IN THE SUZUKI. 13C SUSPECTED COCAINE OUT OF

09:21:22 - Other: BERGER, DETECTIVE PAUL
THE CAR. 13B AGAIN THE SAME THING. 13A ANOTHER ADDITIONAL BAG OUT OF THE

09:22:00 - Other: BERGER, DETECTIVE PAUL
WHITE CAR. 3A VILE OF SUSPECTED HONEY OIL. 1B ZIP LOCK BAGGIE OUT OF THE

09:22:29 - Other: BERGER, DETECTIVE PAUL
GARBADGE. WE TRANSPORTED TO CUSTODY AND PACKAGED. PUT IN HEAT SEALED BAG. IF

09:23:14 - Other: BERGER, DETECTIVE PAUL
DRUG EVIDENCE WE WEIGH IT AND PUT THAT ON THE BAG. THEN SENT TO THE STATE

09:23:37 - Other: BERGER, DETECTIVE PAUL
LAB. HAVE A TRANSITIONAL LOCKER THEN GOES INTO A MAIN LOCKER. ONLY I HAVE THE

09:24:09 - Other: BERGER, DETECTIVE PAUL
KEY TO THE TRANSITIONAL LOCKER. I PREPARED THE EVIDENCE FOR TRIAL. BEEN IN MY

09:25:07 - Other: BERGER, DETECTIVE PAUL
SOUL CUSTODY. EACH PACKAGE HAS AN AREA THAT HAS BEEN OPENED AND THEN

09:25:41 - Other: BERGER, DETECTIVE PAUL
RESEALED. MOVE TO ADMIT THESE 6 EXHIBITS.

09:27:20 - Judge: Carey, George D
1B,3A,13A, 13B, 13C, 14A ALL ADMITTED.

09:27:49 - Other: BERGER, DETECTIVE PAUL
14B --H

09:29:13 - Other: BERGER, DETECTIVE PAUL

14A ZIP LOCK BAG OF MARAJUANA. 14B THE SAME AS 14 A. THERE WAS 7 BAGGIES

09:32:18 - Other: BERGER, DETECTIVE PAUL
IN THE ZIP LOCK. I WEIGHED EACH INDIVIDUAL BAGGIE. WEIGHED THEM WITH A

09:32:51 - Other: BERGER, DETECTIVE PAUL
DIGITAL SCALE. I ZERO OUT THE SCALE BEFORE I USE IT.

09:33:56 - Add Ins: Taylor, Ann
OBJECT

09:34:08 - Judge: Carey, George D
THINK THERE'S SUFFICIENT FOUNDATION LAYED.

09:35:06 - Other: BERGER, DETECTIVE PAUL
I REMEMBER SOME OF THE WEIGHTS OF THE BAGS. THEY RANGED FROM 30.2 GRAMS TO

09:35:37 - Other: BERGER, DETECTIVE PAUL
30.7 GRAMS. WROTE THE WEIGHTS ON THE TOP OF THE BAGGIES. EXHIBIT 14B

09:36:34 - Add Ins: Taylor, Ann
OBJECT

09:36:39 - Judge: Carey, George D
I WILL MARK OUT THE PART ON THE LABEL.

09:37:02 - Other: BERGER, DETECTIVE PAUL
PA MOVE TO ADMIT 44

09:37:54 - Judge: Carey, George D
ADMIT 44

09:38:33 - Judge: Carey, George D
INSTRUCTS THE JURY ON THE ODOR OF THE BAGS. DO NOT OPEN.

09:38:57 - Other: BERGER, DETECTIVE PAUL
EXHIBIT 44 PICTURE OF THE PACKAGED UP MARAJUANA. 28.3 GRAMS PER OUNCE. FROM

09:39:57 - Other: BERGER, DETECTIVE PAUL
\$275.00 TO \$325.00 PER BAG IS THE STREET VALUE. 14D WOULD BE THE TITLE I

09:40:30 - Other: BERGER, DETECTIVE PAUL
LOCATED IN THE SUZUKI ESTEEM. 11-18-04 IS THE TRANSFER DATE. 1997 SUZUKI 4

09:41:06 - Other: BERGER, DETECTIVE PAUL
DOOR. PLT EXHIBIT 40. ZIP LOCK BAGGIES WITH PURPLE TOPS. SAW THEM IN THE

09:42:33 - Other: BERGER, DETECTIVE PAUL
RESIDENCE IN THE CUPBOARD ABOVE THE STOVE. PL EXHIBIT 28. TOP BOX OF BAGGIES

09:43:31 - Other: BERGER, DETECTIVE PAUL
FROM THE CUPBOARD. 5B IS THE PAPERWORK THAT THE WAS IN THE BAG IN THE

09:44:39 - Other: BERGER, DETECTIVE PAUL
CUPBOARD. EXHIBIT 29 IS REFLECTED IN EXHIBIT 28. 29 WOULD BE THE CONTENTS IN

09:46:30 - Other: BERGER, DETECTIVE PAUL
THE BAG, EMPTY BAGS. GLASS VILE WITH HONEY OIL. 9B AND 9C. 9B PUNCTURE SEAL

09:47:25 - Other: BERGER, DETECTIVE PAUL
CAN LOCATED ON THE SAFE. 9C, 8 VILES THAT WERE IN THE PUNCTURE SEAL. EXHIBIT

09:47:59 - Other: BERGER, DETECTIVE PAUL
32 PHOTO OF PUNCTURE SEAL CAN. BOOKED THE PUNCTURE SEAL CAN AND VILES IN

09:48:55 - Other: BERGER, DETECTIVE PAUL
EVIDENCE.

09:49:01 - Add Ins: Taylor, Ann
OBJECT BECAUSE OF THE LABEL

09:49:46 - Judge: Carey, George D
ADMIT THE ITEMS 9C AND 9B

09:51:28 - Other: BERGER, DETECTIVE PAUL
DESCRIBES 1A EXHIBIT. BROKEN KERR CANNING JAR IN THE EXHIBIT. THERE WAS THE

09:53:07 - Other: BERGER, DETECTIVE PAUL
BOTTOM OF THE KERR JAR IN THE HOUSE WITH HONEY COLORED SUBSTANCE ON IT. JEEP

09:53:48 - Other: BERGER, DETECTIVE PAUL
CHEROKEE HAD A HALF FULL BOX OF KERR CANNING JARS. 1B COCAINE RESIDUE. 1A

09:54:42 - Other: BERGER, DETECTIVE PAUL
ALSO IS THE SAME THING. RETRIEVED FROM THE GARBADGE SEARCH. 7B IS THE MSM

09:55:11 - Other: BERGER, DETECTIVE PAUL
BOTTLE I LOCATED ABOVE THE REFRIDGERATOR. MOVE TO ADMIT 7B.

09:56:01 - Add Ins: Taylor, Ann
OBJECT TO LABEL

09:56:10 - Judge: Carey, George D
I'LL MARK OUT THOSE ITEMS AND ADMIT 7 B.

09:57:22 - Other: BERGER, DETECTIVE PAUL
MSM IS A CUTTING AGENT FOR THE DRUGS. 9A IS A DIGITAL SCALE I RECOVERED. I

09:59:04 - Other: BERGER, DETECTIVE PAUL
FOUND SANDWICH BAGGIES WHICH ARE USED FOR THE SALE OF THE DRUGS.

09:59:43 - Add Ins: Taylor, Ann
OBJECT ON THE LABEL.

09:59:54 - Judge: Carey, George D
WILL MARK IT OUT. ADMIT 9A

10:01:22 - Other: BERGER, DETECTIVE PAUL
MOVE TO ADMIT 4A

10:01:39 - Judge: Carey, George D
WILL MARK IT OUT ON THE LABEL. ADMIT 4A

10:02:32 - Other: BERGER, DETECTIVE PAUL
PA MOVE TO ADMIT 11

10:02:52 - Add Ins: Taylor, Ann
SAME OBJECTION

10:02:58 - Judge: Carey, George D
WILL MARK OUT LABEL. ADMIT 11

10:03:54 - Other: BERGER, DETECTIVE PAUL
PA MOVES TO ADMIT 15

10:04:15 - Add Ins: Taylor, Ann
WE HAVE SOME OBJECTIONS WE CAN DISCUSS LATER AT BREAK.

10:04:45 - Other: BERGER, DETECTIVE PAUL
EXHIBIT 11 CHECKS WE GOT OUT OF THE GARGADGE WITH KIRK GOSCHS INFO ON IT.

10:05:43 - Judge: Carey, George D
TAKE A BREAK NOW AND TAKE UP OTHER ISSUES. EXCUSES THE JURY. EXHIBIT WITH

10:06:36 - Judge: Carey, George D
THE WALLET.

10:06:50 - Other: SWARTZ, C.
OBJECT TO THIS EXHIBIT. TOOK HIS DRIVERS LICENSE OUT OF THE WALLET. NO

10:07:17 - Other: SWARTZ, C.
FOUNDATION THAT THIS IS MR GOSCHS SIGNATURE ON THE DRUG LEDGER.

10:07:42 - Judge: Carey, George D
JUDGE INSPECTS THE CONTENTS OF THE EXHIBIT.

10:07:57 - Add Ins: Verharen, Art
THAT PIECE OF PAPER WAS INSIDE THE WALLET.

10:08:43 - Other: SWARTZ, C.
NO TESTIMONY MR GOSCH'S HANDWRITING AND SUSPECTED DRUG LEDGER.

10:09:12 - Judge: Carey, George D

EXHIBIT 15 IS A WALLET AND IDAHO I.D. CARD. WILL ADMIT 15. WILL CROSS OUT
10:10:36 - Judge: Carey, George D
PARTS OF THE LABEL. THAT WILL BE MY RULING.
10:11:25 - Other: SWARTZ, C.
MOVE FOR A MISTRIAL. 9 TIMES I'VE HAD TO ASK FOR THE LABELS TO BE REDACTED
10:12:03 - Judge: Carey, George D
DENY THE MOTION.
10:12:58 - Operator
Stop recording: (On Recess)
10:33:18 - Operator
Recording:
10:33:18 - Record
Gosch, Kirk
10:33:32 - Other: BERGER, DETECTIVE PAUL
PA DX HAVE EXHIBIT OF WALLET THAT WAS FOUND IN THE DRIVER DOOR OF
10:33:59 - Other: BERGER, DETECTIVE PAUL
THE CAR. PLT EXHIBIT 15. IT WAS IN THE JEEP. PA MOVE TO ADMIT 15
10:34:21 - Add Ins: Taylor, Ann
OBJECTION IS FOUNDATION.
10:34:38 - Judge: Carey, George D
ADMIT EXHIBIT 15. COUNCIL APPROACHES THE BENCH. NEED TO LAY MORE FOUNDATION.
10:35:27 - Judge: Carey, George D
I.D. WAS IN THE WALLET . ADMIT 15.
10:36:16 - Other: BERGER, DETECTIVE PAUL
PIECE OF PAPER IN WALLET LOOKS LIKE A DRUG LEDGER. HAS NAMES AND PHONE
10:37:04 - Other: BERGER, DETECTIVE PAUL
NUMBERS. EXHIBIT 38 PHOTO OF THE \$3000.00 THAT WAS IN THE DOOR. LARGE AMOUNTS
10:37:51 - Other: BERGER, DETECTIVE PAUL
OF MONEY WITH A DRUG LEDGER SHOWS POSSIBLE DRUG SALES.
10:38:17 - Other: BERGER, DETECTIVE PAUL
DA CRX LOOK FOR HIGH TRAFFIC AREAS FOR DRUG DEALERS. I WAS A CO-CASE
10:39:20 - Other: BERGER, DETECTIVE PAUL
AGENT. DET MORGAN WAS THE OTHER ONE. I WAS THE EVIDENCE CUSTODIAN. TARGET WAS
10:39:49 - Other: BERGER, DETECTIVE PAUL
KIRK GOSCH. DET MORGAN WAS WITH THE TRASH BAGS ALL THE WAY. TERRY MORGAN AND
10:40:20 - Other: BERGER, DETECTIVE PAUL
I CONDUCTED THE TRASH SEARCH. TERRY MORGAN OBTAINED THE SEARCH WARRANT. I
10:41:25 - Other: BERGER, DETECTIVE PAUL
RECALL MR GOSCH BEING LOST ON A SNOW MOBILE. KYLE MCCORMICK WAS AT THE HOUSE
10:41:59 - Other: BERGER, DETECTIVE PAUL
WHEN WE DID THE SEARCH. HE SAID HE WAS THERE TO CLEAN THE CARPET. MCCORMICK
10:42:27 - Other: BERGER, DETECTIVE PAUL
GOT CUT LOOSE AND WASN'T ARRESTED. MY MAIN JOB WAS TO SEARCH THE RESIDENCE
10:43:07 - Other: BERGER, DETECTIVE PAUL
AND COLLECT THE EVIDENCE. DON'T KNOW WHO BROUGHT BRANDON CAPELLA BACK. DA
10:44:10 - Other: BERGER, DETECTIVE PAUL
MOVE TO ADMIT DEF A.
10:45:34 - Judge: Carey, George D
ADMIT DEF 1
10:45:45 - Other: BERGER, DETECTIVE PAUL
EXHIBITS DEF 2 AND 3 MOVE TO ADMIT.

10:46:12 - Judge: Carey, George D
ADMIT 2 AND 3

10:47:02 - Other: BERGER, DETECTIVE PAUL
HEARD GLASS BREAKING WHEN I APPROACHED THE HOUSE. I YELLED POLICE SEARCH

10:47:57 - Other: BERGER, DETECTIVE PAUL
WARRANT. MR MCCORMICK WAS OUTSIDE. SAW SOMEONE BY THE WINDOW. HEARD GLASS

10:48:28 - Other: BERGER, DETECTIVE PAUL
BREAK AFTER I YELLED POLICE SEARCH WARRANT. LARGE BONG WAS AT THE END OF THE

10:49:00 - Other: BERGER, DETECTIVE PAUL
KITCHEN COUNTER. . DIDN'T SEE HIM RUNNING TOWARD THE SAFE. JEEP WAS

10:49:34 - Other: BERGER, DETECTIVE PAUL
REGISTERED TO MR GOSCH. PICK UP WAS REGISTERED TO HIS DAD. SUZUKI HAS A TITLE

10:50:05 - Other: BERGER, DETECTIVE PAUL
TRANSFER TO MR. GOSCH. TITLE WAS STILL IN MRS. GOSCH'S NAME. BEEN WITH ISP

10:51:16 - Other: BERGER, DETECTIVE PAUL
SINCE 1994. ONE OF MY DUTIES IS TO LIFT ACCURATE FINGERPRINTS. I'VE BEEN ABLE

10:52:03 - Other: BERGER, DETECTIVE PAUL
TO LIFT PRINTS OFF A TREE LEAF BEFORE. COFFEE GRINDER WOULD HAVE BEEN A GOOD

10:52:45 - Other: BERGER, DETECTIVE PAUL
THING TO FINGERPRINT. DID NOT PRINT ANY OF THE JARS. TOOK SEVERAL BUTANE

10:53:26 - Other: BERGER, DETECTIVE PAUL
CANISTERS FROM THE HOUSE. FIX A FLAT CAN I DID NOT PRINT, OR THE SAFE OR THE

10:53:51 - Other: BERGER, DETECTIVE PAUL
SCALE. EXHIBIT 34 THE POCKET IN THE CAR. PLT 15 THE WALLET AND I.D. CARD AND

10:56:28 - Other: BERGER, DETECTIVE PAUL
THE LEDGER. ALL THE SIGNATURES LOOK ALITTLE DIFFERENT. STATES 13A,13C, AND

10:59:16 - Other: BERGER, DETECTIVE PAUL
13B. THE SUBSTANCE IS COMPACTED AND BREAKS UP. DON'T KNOW HOW MUCH OF IT HAS

11:00:26 - Other: BERGER, DETECTIVE PAUL
BEEN CUT WITH THE MSM. I CAN'T TELL HOW MUCH HAS BEEN CUT. TRUNK OF THE CAR

11:01:26 - Other: BERGER, DETECTIVE PAUL
WAS ALREADY OPENED AND I WAS TOLD TO COME OUT. VAGUELY AWARE OF THE SEARCH OF

11:02:07 - Other: BERGER, DETECTIVE PAUL
KIRK GOSCH'S STORAGE UNIT. I DIDN'T DO THE STORAGE UNIT SEARCH. WE DID

11:02:45 - Other: BERGER, DETECTIVE PAUL
INVENTORY THE BLACK JEEP. WAS CLOTHING IN THE JEEP. DIDN'T INVENTORY THE

11:03:08 - Other: BERGER, DETECTIVE PAUL
WHITE CAR. WAS A SPEAKER BOX IN THE CAR. HAVEN'T SPOKEN TO BRANDON CAPELLA

11:04:07 - Other: BERGER, DETECTIVE PAUL
LATELY. HAD WEAPONS DRAWN WHEN WE ENTERED THE RESIDENCE. PA RDX

11:05:14 - Other: BERGER, DETECTIVE PAUL
PEOPLE THAT WERE THERE WERE HELPING MOVE MR. GOSCH MOVE OUT. DIDN'T FIND ANY

11:05:50 - Other: BERGER, DETECTIVE PAUL
EVIDENCE TYING MR CAPELLO TO THE DRUGS. FOUND NO EVIDENCE OF ANYONE ELSE

11:06:19 - Other: BERGER, DETECTIVE PAUL
BESIDES MR GOSCH LIVED IN THE RESIDENCE. ONLY 1 BED WAS SET UP IN THE

11:07:06 - Other: BERGER, DETECTIVE PAUL
HOUSE. NO SHEETS OR BLANKETS ON THE BED. MOVED OUT BY THE KITCHEN AREA.. JUST

11:07:53 - Other: BERGER, DETECTIVE PAUL
A MATTRESS AND BOX SPRING. FIRST DOCUMENT A CAR TOYS RECIEIPT. FOR A STERIO

11:09:59 - Other: BERGER, DETECTIVE PAUL

SYSTEM OR SPEAKERS. ANOTHER RECIEPT FOR ANOTHER SPEAKER. SYLVAN FURNITURE
11:10:30 - Other: BERGER, DETECTIVE PAUL
RECIEPT FOR KAY SMITH. THEY HAVE NOTHING TO DO WITH THE CASE. EXHIBIT 5B,
11:11:22 - Other: BERGER, DETECTIVE PAUL
LETTERS FROM THE LANDLORD.
11:12:26 - Add Ins: Taylor, Ann
OBJECT. LEADING.
11:12:43 - Other: BERGER, DETECTIVE PAUL
WHEN COCAINE IS PACKAGED ITS IN A CHUNK FORM. STILL LOTS OF CHUNKS IN THIS
11:13:31 - Other: BERGER, DETECTIVE PAUL
COCAINE. MR. MCCORMICK WAS CUT LOOSE CAUSE HE WAS THERE TO CLEAN THE CARPETS.
11:14:11 - Other: BERGER, DETECTIVE PAUL
WAS OBVIOUS STICKY SUBSTANCE ON THE BUTANE CAN. KNEW I COULD LIFT THE
11:15:03 - Other: BERGER, DETECTIVE PAUL
FINGERPRNTS. DA RCX THERE WAS NOTHING TO LINK BRANDON CAPELLO TOO.
11:15:41 - Other: BERGER, DETECTIVE PAUL
HE WAS ARRESTED. EXCLUDED THE OTHER PEOPLE ON THE RECEIPTS BECAUSE THEY
11:16:33 - Other: BERGER, DETECTIVE PAUL
WEREN'T AT THE RESIDENCE. THE TARGET WAS KIRK GOSCH. DON'T KNOW IF BRANDON
11:18:01 - Other: BERGER, DETECTIVE PAUL
CAPPELLO WAS STAYING AT THE RESIDENCE.
11:18:16 - Judge: Carey, George D
EXCUSE THE WITNESS.
11:18:36 - Add Ins: Verharen, Art
STATE RESTS.
11:18:49 - Judge: Carey, George D
GO AHEAD AND TAKE OUR LUNCH BREAK. COME BACK AT 1:00 PM. ADMONISHES JURY.
11:20:19 - Other: SWARTZ, C.
ASK FOR JUDGMENT OF AN AQUITTLE. STATE HAS SAID THE MISM IS A RIP OFF USED TO
11:20:54 - Other: SWARTZ, C.
CUT THE COCAINE. UNTESTED WEIGHT OF THE COCAINE. TRAFFICKING OF COCAINE MR
11:21:22 - Other: SWARTZ, C.
GOSCH IS ENTITLED TO AN AQUITTLE.
11:21:34 - Add Ins: Verharen, Art
QUOTES THE LAW. ASK YOU TO DENY THE MOTION.
11:22:03 - Other: SWARTZ, C.
MSM IS NOT A CONTROLLED SUBSTANCE. THEY DID NOT LAY FOUNDATION FOR THE
11:22:28 - Other: SWARTZ, C.
TESTING OF THE COCAINE. STATE IS TRYING TO USE THE EVIDENCE OF THE MIXTURE.
11:23:14 - Judge: Carey, George D
QUOTES THE STATUATE. TRAFFICKING COCAINE. THINK THE STATE HAS SHOWED SUFFIENT
11:24:21 - Judge: Carey, George D
EVIDENCE. MR SINCERBEAUX SHOWED ENOUGH EVIDENCE. DENY THE MOTION.
11:24:56 - Other: SWARTZ, C.
ASK FOR A MISTRIAL BECAUSE OF ALL THE MISTAKES. HAVE MADE SEVERAL LEADING
11:25:34 - Other: SWARTZ, C.
FOUNDATIONS. PRIDUDICE TO THE JURY. WE'VE OBJECTED TO MANY THINGS.
11:26:17 - Add Ins: Verharen, Art
LEADING QUESTIONS ARE ALLOWABLE TO A CERTAIN EXTENT.
11:26:34 - Judge: Carey, George D
SO IT'S LEADING , SO WHAT. FLY SPEC OBJECTIONS. DON'T CONSIDER THIS A

11:27:34 - Judge: Carey, George D
MISTRIAL. DENY THAT MOTION.
11:27:45 - Add Ins: Taylor, Ann
DON'T HAVE A COPY OF THE JURY INSTRUCTIONS.
11:27:59 - Judge: Carey, George D
YOUR CLOSE TO GETTING THOSE. HAVE SOME TYPOS TO CORRECT.
11:29:33 - Operator
Stop recording: (On Recess)
11:29:53 - Operator
Recording:
11:29:53 - Record
Gosch, Kirk
11:30:46 - Operator
Stop recording: (On Recess)
11:37:24 - Operator
Recording:
11:37:24 - Record
Gosch, Kirk
11:37:50 - Operator
Stop recording:

Case ID: 0003

Case number: CR-2005-00403
Plaintiff:
Plaintiff Attorney:
Defendant: Gosch, Kirk
Previous audio and annotations can be found in case: 0002
Co-Defendant(s):
Pers. Attorney:
State Attorney:
Public Defender:

11:45:44 - Operator
Recording:
11:45:44 - Recall
Gosch, Kirk
11:46:03 - Operator
Stop recording: (On Recess)

Session: Carey072706A
Session Date: 2006/07/27
Judge: Carey, George D
Reporter: Schaller, Joann

Division: DIST
Session Time: 11:53

Courtroom: Courtroom9

Clerk(s):
Mollett, Charmaine

State Attorney(s):

Public Defender(s):

Prob. Officer(s):

Court interpreter(s):

Day 3 7-27-06

Charmaine Mollett

Case ID: 0001

Case number: CR05-00403

Plaintiff:

Plaintiff Attorney:

Defendant: Gosch, Kirk

Co-Defendant(s):

Pers. Attorney:

State Attorney:

Public Defender:

2006/07/27

13:04:32 - Operator

Recording:

13:04:32 - New case

Gosch, Kirk

13:04:38 - Judge: Carey, George D

CALLS CASE.

13:04:52 - Add Ins: Taylor, Ann

REQUEST TO RECESS THE TRIAL TO FIND OUR WITNESS. GRANT GOSCH HAS BEEN

13:05:20 - Add Ins: Taylor, Ann

SUPEONAED BY ME. HE KNOWS HE WAS SUPPOSED TO BE HERE. HE'S CRITICAL TO OUR

13:05:46 - Add Ins: Taylor, Ann

CASE. WAS PRESENT YESTERDAY.

13:06:21 - Judge: Carey, George D

THOUGHT WE WERE EXCLUDING WITNESSES. TRY TO LOCATE THE WITNESS. BRING IN THE

13:07:24 - Judge: Carey, George D

JURY. JURY PRESENT AND IN PLACE.

13:08:44 - Add Ins: Gosch, Sharon

DA DX KNOW KIRK GOSCH. HE'S MY YOUNGEST SON. KNOW MR. CAPPELLA. HE

13:09:38 - Add Ins: Gosch, Sharon
PLAYED BALL WITH MY SON. KNEW WHERE BRANDON WAS LIVING, HE TOLD ME. DIDN'T

13:10:10 - Add Ins: Gosch, Sharon
KNOW WHERE KIRK LIVED. I PURCHASED THE WHITE SUZUKI FOR MY DAUGHTER IN LAW.

13:10:53 - Add Ins: Gosch, Sharon
WE LIVED WITH MY SON FOR 6 MONTHS. KIRK DROVE A BLACK JEEP CHEROKEE. NEVER

13:11:37 - Add Ins: Gosch, Sharon
SAW KIRK DRIVE THE WHITE SUZUKI, TERRY MORGAN SAID I NEEDED TO PICK UP THE

13:12:05 - Add Ins: Gosch, Sharon
CAR. PICKED IT UP ON RIM ROCK ROAD. CAR WAS PARKED IN A SNOW BANK. THERE WAS

13:12:35 - Add Ins: Gosch, Sharon
COTHS , PAPERS, BEAN BAG CHAIRS. CAR HAD LICENSE PLATES ON IT. PA

13:13:09 - Add Ins: Gosch, Sharon
CRX BRANDON AND KIRK WERE FRIENDS. KNOWN EACH OTHER SINCE LITTLE

13:13:35 - Add Ins: Gosch, Sharon
LEAGUE. THEY DON'T HANG OUT TOGETHER. NOT SURE IF BRANDON DROVE MY SONS JEEP.

13:14:05 - Add Ins: Gosch, Sharon
THEY WERE LIVING TOGETHER. SAW THE TITLE TO THE CAR WHEN I REGISTERED IT. I

13:14:46 - Add Ins: Gosch, Sharon
AS K TO BORROW THE CAR WHILE MY CAR WAS BEING REPAIRED. I BOUGHT THE CURRENT

13:15:12 - Add Ins: Gosch, Sharon
TAGS SO I COULD DRIVE IT. CAR WAS PRETTY NEW. GOT IT REGISTERED IN MY

13:16:52 - Add Ins: Gosch, Sharon
DAUGHTER IN LAWS NAME. IT WAS IN HER NAME FROM DAY ONE. DON'T KNOW IF THE

13:17:33 - Add Ins: Gosch, Sharon
TITLE WENT TO MR. CAPELLA. HE WAS DRIVING THE CAR. DAUGHTER IN LAWS NAME ON

13:19:14 - Add Ins: Gosch, Sharon
THE TITLE. SHE'S MARRIED TO MY OLDEST SON GRANT. DIDN'T KNOW ABOUT TO CAR

13:20:02 - Add Ins: Gosch, Sharon
BEING TRANSFERRED TO KIRK. NOT MY SON'S SIGNATURE ON THIS TITLE. KNOW NOTHING

13:21:10 - Add Ins: Gosch, Sharon
ABOUT THE TRANSFER OF THE CAR. WINTER MONTHS WHEN I SAW BRANDON DRIVING THE

13:21:49 - Add Ins: Gosch, Sharon
CAR. DIDN'T KNOW MY SON WAS LIVING AT THAT HOUSE. DON'T KNOW WHERE MY SON

13:23:19 - Add Ins: Gosch, Sharon
LIVED. HE LIVED WITH ME ON SHERWOOD COURT WHEN HE WAS PLAYING BASEBALL. LAST

13:24:44 - Add Ins: Gosch, Sharon
PLACE I REMEMBER HIM LIVING WAS WITH US. HE HAD THE BLACK JEEP A FEW YEARS.

13:25:33 - Add Ins: Gosch, Sharon
WE BOUGHT IT FOR HIM. HE KEPT THE JEEP PRETTY CLEAN. MY SON DOESN'T HAVE A

13:26:18 - Add Ins: Gosch, Sharon
WHITE PICK UP TRUCK. IT BELONGED TO MY HUSBAND. I HAD NEVER BEEN TO THE RIM

13:27:14 - Add Ins: Gosch, Sharon
ROCK HOUSE. I WAS TOLD TO GET THE CAR FROM THE RESIDENCE. GOT THE CAR THE DAY

13:28:04 - Add Ins: Gosch, Sharon
AFTER MY SON GOT ARRESTED. CAR SAT THERE UNTIL BRANDON CAME AND GOT HIS

13:28:27 - Add Ins: Gosch, Sharon
STUFF. HE NEVER CAME TO THE DOOR WHEN HE CAME TO GET HIS STUFF OUT OF THE

13:29:23 - Add Ins: Gosch, Sharon
CAR. HADN'T BEEN TO MY SON'S HOUSE BETWEEN 2003 AND 2005. I TRIED TO GET

13:30:27 - Add Ins: Gosch, Sharon

AHOLD OF MR CAPELLA TO COME AND GET THE STUFF OUT OF THE CAR. HE HAD HIS
13:31:11 - Add Ins: Gosch, Sharon
DRYWALL TOOLS IN THE CAR. DON'T KNOW WHERE THE CAR IS NOW. I STILL HAVE THE
13:31:54 - Add Ins: Gosch, Sharon
CAR. AS FAR AS I KNOW THE CAR IS STILL IN MICHELLE JACKSONS NAME. I ASSUME MR
13:33:58 - Add Ins: Gosch, Sharon
CAPELLO WAS DRIVING THE CAR BECAUSE THEY WERE SELLING IT TO HIM. MY SON KIRK
13:34:32 - Add Ins: Gosch, Sharon
HAS WORKED FOR MY SON GRANT. MY SON DID ODD JOBS IN DRYWALL. . SINCE MY SON'S
13:35:54 - Add Ins: Gosch, Sharon
ARREST HE'S BEEN LIVING WITH ME. WE AREN'T CLOSE AT ALL. HE WON'T TALK
13:36:24 - Add Ins: Gosch, Sharon
ABOUT THE ARREST. SAW MR. CAPELLO ONE TIME AFTER HE CAME AND GOT THE STUFF
13:37:21 - Add Ins: Gosch, Sharon
FROM THE CAR. KNEW MY SON HAD A DOG. TERRY MORGAN CALLED ME UP AND TOLD ME TO
13:37:55 - Add Ins: Gosch, Sharon
PICK UP THE DOG. PICKED IT UP AT THE RIM ROCK HOME. I PICKED UP SOME PERSONAL
13:39:17 - Add Ins: Gosch, Sharon
THINGS OF KIRKS. POTS AND PANS ETC. DIDN'T KNOW WHAT WAS KIRKS AND WHAT WAS
13:39:55 - Add Ins: Gosch, Sharon
BRANDONS. WASN'T A BED THERE. DIDN'T PICK UP A T.V. PLTS 31 PICTURE. WE
13:42:04 - Add Ins: Gosch, Sharon
PACKAGED KITCHEN STUFF. I CLEANED OUT THE REFRIDGERATOR. TOOK A BROOM,
13:42:34 - Add Ins: Gosch, Sharon
VACUUM, WISK BROOM. NEXT DAY AND THE DAY AFTER I GOT HIS STUFF.
13:43:38 - Judge: Carey, George D
EXCUSES THE WITNESS
13:44:16 - Other: DURANT, MARK
DA DX HAVE 11 YEARS AS AN INVESTIGATOR. 18 YEARS WITH L.A. COUNTY,
13:44:57 - Other: DURANT, MARK
5 YEARS MILITARY. HAVE BEEN TRYING TO LOCATE BRANDON CAPPELA. HIS MOTHER
13:45:43 - Other: DURANT, MARK
COULDN'T ASSIST ME IN LOCATING HIM. I PUT IN A REQUEST FOR A SUPEONA. NEVER
13:46:23 - Other: DURANT, MARK
BEEN ABLE TO TRACK HIM DOWN.
13:46:34 - Judge: Carey, George D
EXCUSES THE WITNESS. TAKE A SHORT RECESS.
13:47:02 - Operator
Stop recording: (On Recess)
13:47:32 - Operator
Recording:
13:47:32 - Record
Gosch, Kirk
13:47:34 - Judge: Carey, George D
TAKE UP THE JURY INSTRUCTION MATTER.
13:48:21 - Other: SCHWARTZ, CHRISTOPHER
ARGUES SOME JURY INSTRUCTIONS. ELEMENTS OF SIMPLE POSSESSION.
13:49:21 - Add Ins: Verharen, Art
ONLY INPUT I HAVE IS A TRANSITIONAL .
13:50:14 - Judge: Carey, George D
IF THAT ELEMENT IS MISSING WE CAN CONSIDER IT LATER.

13:50:49 - Operator
Stop recording: (On Recess)

13:51:06 - Operator
Recording:

13:51:06 - Record
Gosch, Kirk

13:51:09 - Judge: Carey, George D

13:51:28 - Operator
Stop recording: (On Recess)

14:05:15 - Operator
Recording:

14:05:15 - Record
Gosch, Kirk

14:05:17 - Judge: Carey, George D

14:05:31 - Add Ins: Taylor, Ann
SHARON GOSCH SAID SHE KNOW S ONE OF THE JURORS.

14:06:28 - Add Ins: Verharen, Art
OBVIOUSLY THE JUROR KNOWS THE WITNESS.

14:07:15 - Judge: Carey, George D
HAVEN'T FOUND THE OTHER WITNESS YET.

14:07:36 - Add Ins: Taylor, Ann
HIS WIFE IS TRYING TO LOCATE HIM. WE KNOW WHERE HE LIVES IF WE WANT TO BREAK

14:07:59 - Add Ins: Taylor, Ann
LONG ENOUGH TO ESCORT HIM IN.

14:08:59 - Judge: Carey, George D
DIEDRE GILMORE PRESENT ONE OF THE JURORS.

14:10:10 - Other: GILMORE, DEIDRE
DON'T KNOW THE WITNESS SHARON GOSCH

14:10:29 - Judge: Carey, George D

14:10:38 - Add Ins: Taylor, Ann
EXPECT THE DEF TO TESTIFY ABOUT MR CAPPELLA. HAVEN'T MADE A FINAL DECISION.

14:11:42 - Judge: Carey, George D
GRANT IS THE BROTHER OF THE DEFENDANT. GO FIND HIM AND RETURN AT 3:30.

14:12:47 - Operator
Stop recording: (On Recess)

15:29:14 - Operator
Recording:

15:29:14 - Record
Gosch, Kirk

15:29:15 - Judge: Carey, George D
BACK IN SESSION.

15:30:46 - Add Ins: Taylor, Ann
KIRK FOUND HIM AND HE SAID HE WAS COMING.

15:31:14 - Judge: Carey, George D

15:31:28 - Add Ins: Taylor, Ann
MY CLIENT WILL NOT TESTIFY.

15:31:40 - Judge: Carey, George D
YOU HAVE THE RIGHT TO TESTIFY OR NOT. IF YOU DON'T TESTIFY INSTRUCTION WILL

15:32:11 - Judge: Carey, George D
BE GIVEN TO THE JURORS.

15:32:21 - Defendant: Gosch, Kirk

CHOOSE NOT TO TESTIFY. I UNDERSTAND.

15:33:04 - Operator

Stop recording: (On Recess)

15:56:47 - Operator

Recording:

15:56:47 - Record

Gosch, Kirk

15:56:48 - Judge: Carey, George D

BACK IN SESSION

15:57:01 - Add Ins: Gosch, Grant

KNOW KIRK , HE'S MY BROTHER. I KNOW BRANDON CAPPELLA. KNOWN HIM ABOUT 4 OR 5

15:57:55 - Add Ins: Gosch, Grant

YEARS. HE LIVED WITH MY BROTHER. MY WIFE OWNED A WHITE SUZUKI ASTEEM. WE SOLD

15:58:57 - Add Ins: Gosch, Grant

IT TO BRANDON. THE CAR IS AT MY PARENTS HOUSE RIGHT NOW. ONLY SEEN BRANDON

15:59:27 - Add Ins: Gosch, Grant

ONCE SINCE THIS WHOLE THING OCCURED. HE KNOWS PEOPLE WERE LOOKING FOR HIM.

16:00:03 - Add Ins: Gosch, Grant

PA CRX I PICKED UP BRANDON AT MY BROTHERS HOUSE ALMOST EVERY DAY FOR

16:00:41 - Add Ins: Gosch, Grant

WORK. NOT REAL CLOSE TO MY BROTHER. KNEW MY BROTHER HAD BEEN LIVING THERE. I

16:01:10 - Add Ins: Gosch, Grant

HAD TO MOVE ALL HIS STUFF OUT OF THERE.

16:01:24 - Add Ins: Taylor, Ann

OBJECT

16:01:31 - Add Ins: Gosch, Grant

MOVED MY BROTHERS STUFF OUT A COUPLE DAYS AFTER THE INCIDENT. I DIDN'T GET

16:02:08 - Add Ins: Gosch, Grant

THE SAFE. EVERYTHING WAS OUT OF THE HOUSE EXCEPT THE SOFA, T.V. ETC. HE HAD

16:02:39 - Add Ins: Gosch, Grant

ANOTHER GUY THAT LIVED THERE ALSO. HIS NAME WAS JOHNNY. HE MOVED OUT ABOUT A

16:03:03 - Add Ins: Gosch, Grant

MONTH BEFORE. DON'T KNOW ANYTHING ABOUT THE RENTAL AGREEMENT. I ONLY WENT

16:03:56 - Add Ins: Gosch, Grant

OVER THERE TO PICK UP BRANDON. HAD A LITTLE LOFT AREA. KITCHEN AREA WAS TO

16:04:40 - Add Ins: Gosch, Grant

THE RIGHT. SMALL BATHROOM, ASSUME THERE WAS A BEDROOM. THINK MY BROTHERS

16:05:11 - Add Ins: Gosch, Grant

BEDROOM WAS UPSTAIRS. DON'T KNOW IF THERE WAS A BED IN THE BEDROOM OR THE

16:05:50 - Add Ins: Gosch, Grant

LOFT. DON'T KNOW WHERE MR CAPPELLA STAYED. DON'T KNOW WHAT THEIR ARRANGEMENT

16:06:18 - Add Ins: Gosch, Grant

WAS. I MET BRANDON THROUGH MY FATHERS BUSINESS. MY BROTHER AND BRANDON WERE

16:06:55 - Add Ins: Gosch, Grant

PRETTY GOOD FRIENDS. THINK BRANDON DROVE THE BLACK JEEP THE DAY THEY WERE

16:07:22 - Add Ins: Gosch, Grant

MOVING OUT. WHITE CHEVY TRUCK WOULD BE MY DADS. WHITE CAR IS A SUZUKI ESTEEM.

16:09:02 - Add Ins: Gosch, Grant

MY WIFE SOLD THE CAR SOMETIME IN NOVEMBER TO BRANDON. THINK SHE SOLD IT FOR

16:09:52 - Add Ins: Gosch, Grant

\$1200.00 OR \$1300.00. PL 14D TITLE TO TRANSFER. BRANDON GAVE US \$400.00 FOR

16:10:46 - Add Ins: Gosch, Grant
THE CAR.AFTER WE SOLD THE CAR TO BRANDON HE DROVE HIMSELF TO WORK. DON'T KNOW

16:11:46 - Add Ins: Gosch, Grant
IF THIS DOCUMENT EVER GOT FILED. BRANDON AND I WORKED TOGETHER. MY BROTHER

16:12:24 - Add Ins: Gosch, Grant
FRONTED BRANDON THE REST OF THE MONEY FOR THE CAR. DOWN PAYMENT WAS THE

16:13:15 - Add Ins: Gosch, Grant
\$400.00 MY BROTHER PAID. FAR AS I'M CONCERNED BRANDON BOUGHT THE CAR. I HEARD

16:14:07 - Add Ins: Gosch, Grant
MR. CAPPELLA WENT TO MY MOMS TO PICK UP HIS STUFF OUT OF THE CAR. WHEN I

16:15:28 - Add Ins: Gosch, Grant
TALKED TO BRANDON HE SAID HE DIDN'T KNOW SOMEONE WAS TRYING TO LOCATE HIM.

16:16:02 - Add Ins: Gosch, Grant
LAST TIME I WAS OVER THERE WAS RIGHT AROUND THE TIME OF THE INCIDENT.

16:16:33 - Add Ins: Gosch, Grant
PROBABLY OVER THERE IN LATE DECEMBER BEFORE X-MAS. PL 17 AND 18, PICTURES OF

16:17:51 - Add Ins: Gosch, Grant
THE KITCHEN. NO BAGGIE OF MARAJUANA WAS THERE WHEN I WAS THERE. BLENDER WAS

16:18:24 - Add Ins: Gosch, Grant
THERE. IT WAS ALWAYS SO DIRTY OVER THERE. HE'S A SLOB. NEVER SAW THE COFFEE

16:19:17 - Add Ins: Gosch, Grant
GRINDER. NEVER OPENED ANY CUPBOARDS WHEN I WAS THERE. NEVER SAW ANY BROKEN

16:19:53 - Add Ins: Gosch, Grant
JARS OR VILES WHEN I WAS OVER THERE.HE HAD ROOMMATES AND PARTIES OVER THERE

16:20:25 - Add Ins: Gosch, Grant
ALL THE TIME. PL 31. NEVER WENT IN THE BATHROOM. NEVER HELPED MOVE MY BROTHER

16:21:50 - Add Ins: Gosch, Grant
OUT. ONLY AFTER THE ARREST.

16:22:17 - Judge: Carey, George D
RELEASE THE WITNESS.

16:22:30 - Add Ins: Taylor, Ann
THE DEFENSE RESTS.

16:22:40 - Judge: Carey, George D
FINAL JURY INSTRUCTIONS.

16:29:45 - Add Ins: Verharen, Art
CLOSING STATEMENT.

16:52:38 - Other: SCHWARTZ, CHRISTOPHER
CLOSING STATEMENT.

17:05:32 - Add Ins: Verharen, Art
FINAL CLOSING STATEMENT

17:13:02 - Judge: Carey, George D
CALLED ALTERNATE JURORS. #12 KIANE DEMILLE AND #11 SAMANTHA LEAVELL.

17:14:45 - Judge: Carey, George D
INSTRUCTS THE JURY ON GOING INTO DELIBERATION. THANKS THE ALTERNATES FOR

17:17:00 - Judge: Carey, George D
THEIR TIME AND SERVICES.BE IN RECESS.

17:18:40 - Operator
Stop recording: (On Recess)

20:27:32 - Operator
Recording:

20:27:32 - Record

Gosch, Kirk

20:27:36 - Judge: Carey, George D

JURY HAS REACHED A VERDICT. JURY PRESENT AND IN PLACE. INSTRUCTS THE JURY.

20:31:06 - Judge: Carey, George D

READS THE VERDICT. COUNT 1 NOT GLTY, COUNT 2 GLTY, COUNT 3 GLTY, COUNT 4

20:31:46 - Judge: Carey, George D

GLTY. POLLED JURY. ALL AGREED. JURY DISMISSED. VERDICT WILL BE ENTERED. ORDER

20:33:59 - Judge: Carey, George D

PRE-SENTENCE EVALUATION AND SUBSTANCE ABUSE . SENT FOR SEPT 13 AT 3:00 PM

20:36:48 - Operator

Stop recording:

State of Idaho)
County of Kootenai) ss
Filed 7-27-06
At _____ o'clock _____ M.
CLERK OF THE COURT
BY: Charmaine Mallett
Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,

Plaintiff,

Case No. CRF-05-403

ORDER FOR EVALUATION(S)
AND SETTING SENTENCING

vs.

Kirk J. Gosch

Defendant.

In Custody ☐ Yes
☒ No

DOE

The above named defendant having - ☐] pled guilty in this matter, ☒] been found guilty by jury trial
to: Poss MJ w/ intent to deliver, Mfg of C.S. (MARIJUANA)
Poss M.J. in excess of 3 oz.

IT IS ORDERED that not later than the next business day after the date of this order you must
physically report to Probation & Parole, 202 Anton, Coeur d'Alene, Idaho (208/769-1444) and comply with
conditions of the presentence investigation. The presentence report is due seven (7) days prior to the
sentencing hearing.

IT IS FURTHER ORDERED that your continued release is conditioned upon your making and keeping
all appointments with Probation & Parole, complying with all conditions of the presentence investigator, and
obtaining any or all of the following evaluations. You must obtain any evaluation checked below.

☐ Psychosexual Evaluation
☒ Substance Abuse Evaluation
☐ Domestic Violence Evaluation

YOU ARE ORDERED to appear for sentencing on September 13, 2006 at 3:00 p.m.

DATED this 27 day of July, 2006.

Judge [Signature]

CERTIFICATE OF MAILING

I hereby certify that on the 27 day of July, 2006 copies of the foregoing Order
were mailed, postage prepaid, or sent by facsimile or interoffice mail to:

Defense Attorney: A. Taylor

☒ In Court ☐ Interoffice ☐ Mailed

Defendant: Kirk Gosch

☒ In Court ☐ Interoffice ☐ Mailed

Probation & Parole: Faydd 769-1481

☐ In Court ☐ Interoffice ☒ Faxed

Prosecuting Attorney: KCPA

☒ In Court ☐ Interoffice ☐ Mailed

Other: _____

☐ In Court ☐ Interoffice ☐ Mailed

CLERK OF THE DISTRICT COURT KOOTENAI COUNTY

BY: Charmaine Mallett

Session: Hosack091306P
Session Date: 2006/09/13
Judge: Hosack, Charles
Reporter: Schaller, Joann

Division: DIST
Session Time: 10:36

Courtroom: Courtroom9

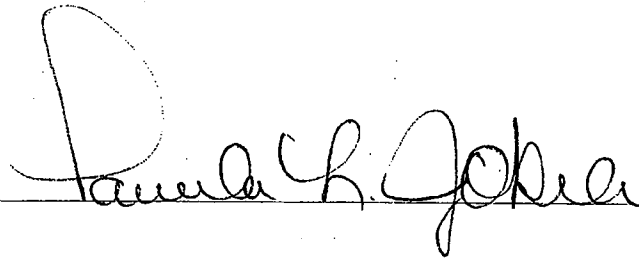
Clerk(s):
Jokela, Pam

State Attorney(s):
Ryan, Joel
Swenson, Blake

Public Defender(s):
Anderson, Stacie
Chapman, Brad
Schwartz, Christopher
Palmer, Michael
Siegel, Val
Taylor, Anne

Prob. Officer(s):

Court interpreter(s):



Case ID: 0004

Case number: CR2005-403
Plaintiff:
Plaintiff Attorney:
Defendant: GOSCH, KIRK JULLIARD
Co-Defendant(s):
Pers. Attorney:
State Attorney: Swenson, Blake
Public Defender: Schwartz, Christopher

2006/09/13

15:43:34 - Operator

Recording:

15:43:34 - New case

GOSCH, KIRK JULLIARD

15:43:45 - Judge: Hosack, Charles

CALLS CSE

15:43:48 - Add Ins: SENTENCING

15:43:50 - State Attorney: Swenson, Blake

15:43:58 - Public Defender: Taylor, Anne

15:44:17 - Judge: Hosack, Charles

ALL PARTIES ARE PRESENT

15:44:23 - Public Defender: Schwartz, Christopher

15:45:31 - Judge: Hosack, Charles

HAVE RECEIVED A PRE-SENTENCE REPORT AND LETTERS AND EMPLOYMENT CARD AND

15:45:59 - Judge: Hosack, Charles

STUDENT BODY CARD ALSO EVALUATION. THOSE ARE THE MATERIALS IN THE PSI.

15:46:14 - State Attorney: Swenson, Blake

READY TO PROCEED

15:46:18 - Public Defender: Schwartz, Christopher

READY TO PROCEED

15:46:23 - Judge: Hosack, Charles

ARE THERE ANY CHANGES IN PSI

15:46:28 - Public Defender: Schwartz, Christopher

PAGE 7, EMPLOYMENT HAS CHANGED, HE WORKS FOR SPECIALTY CONSTRUCTION NOT

15:46:51 - Public Defender: Schwartz, Christopher

RIMROCK DRY WALL. THAT IS IT.

15:47:26 - Judge: Hosack, Charles

ANY EVIDENTIARY PRESENTATION?

15:47:36 - State Attorney: Swenson, Blake

NO

15:47:38 - Public Defender: Schwartz, Christopher

NO

15:47:39 - Judge: Hosack, Charles

YOU DO HAVE THE RIGHT TO SPEAK TO THE COURT. I WON'T HOLD IT AGAINST YOU IF

15:47:54 - Judge: Hosack, Charles

YOU CHOOSE NOT TOO. DO YOU WANT TO TALK TO THE COURT?

15:48:20 - Defendant: GOSCH, KIRK JULLIARD

AT THIS MOMENT I AM OK. I DON'T HAVE ANYTHING TO SAY

15:48:33 - State Attorney: Swenson, Blake

EXCUSES THAT HE HAD A BAD HOME LIFE, GREW UP IN A BAD AREA. KIRK HAS NOT

15:49:12 - State Attorney: Swenson, Blake

TAKE RESPONSIBILITIES OF WHAT HE DID. HE GREW UP IN HOME THAT STOOD BEHIND

15:49:33 - State Attorney: Swenson, Blake

HIM IN SCHOOL, SPORTS AND EVERYTHING. HE SAYS HE THINKS THAT HE IS NOT A

15:49:54 - State Attorney: Swenson, Blake

CRIMINAL. HE HAS A GOOD HOME LIFE. HE IS A CONVICTED DRUG DEALER, THAT IS

15:50:40 - State Attorney: Swenson, Blake

THE BOTTOM LINE. HE GOT A SCHOLARSHIP TO GO TO ARIZONA AND HE LOST THAT

15:51:00 - State Attorney: Swenson, Blake

OPPORTUNITY AS WELL. I AM NOT GOING THROUGH THE FACTS OF THIS CASE. THE

15:51:14 - State Attorney: Swenson, Blake

JURY CAME BACK WITH A GUILTY PLEA ON THREE COUNTS. YOU READ THE PSI, YOU

15:51:47 - State Attorney: Swenson, Blake

CAN SEE HE HAS OTHER DRUGS IN HIS LIFE. SOME HE WAS CONVICTED SOME WERE

15:52:03 - State Attorney: Swenson, Blake

DISMISSED. PSI INDICATES THAT HE NEEDS TO GO TO PRISON, NOT A SPECIFIC

15:52:37 - State Attorney: Swenson, Blake

RECOMMENDATION, THAT A RETAIN JURISDICTION WOULD BE GOOD. HE HAD MANY

15:52:50 - State Attorney: Swenson, Blake

OPPORTUNITIES IN LIFE AND HE HAS CHOSEN THE CRIMINAL CONDUCT. STRONGLY \$400

15:53:11 - State Attorney: Swenson, Blake

TO ISP LAB 2 YRS FIXED AND 3 INDETERMINATE FOR EACH COUNT. NO PROBATION NO
15:53:31 - State Attorney: Swenson, Blake
RETAIN JURISDICTION. HE NEEDS TO TAKE RESPONSIBILITY.
15:53:45 - Public Defender: Schwartz, Christopher
THERE ARE 4 GOALS OF SENTENCING. EVNETS HAPPENED ALMOST 2 YEARS AGO. HE
15:54:19 - Public Defender: Schwartz, Christopher
HAD BEEN OR'D AND HAS BEEN HERE FOR EVERY HEARING THAT HAS BEEN SET BEFORE
15:54:35 - Public Defender: Schwartz, Christopher
HIM. HE DOES MEET THE REQUIREMENT. HE HAS NOT MORE NEW CHARGES. HE HAS
15:54:55 - Public Defender: Schwartz, Christopher
IMPROVED HIS LIFE IN THE LAST 2 YEARS. HE HAS A NEW JOB WORKING FOR A LARGE
15:55:14 - Public Defender: Schwartz, Christopher
CONSTRUCTION COMPANY. HE HAS A CHILD ON THE WAY, IT IS DUE 12/31/06. THAT I
15:55:51 - Public Defender: Schwartz, Christopher
IS WHY HE IS TURNING HIS LIFE AROUND. HE IS ENROLLED IN 10 CREDITS AT NIC
15:56:13 - Public Defender: Schwartz, Christopher
AND WORKS AT NIGHT. HE IS SHOWING THAT HE IS TRYING TO TURN HIS LIFE AROUND.
15:56:31 - Public Defender: Schwartz, Christopher
THE EVALUAITON SAYS TO GET ENROLLED IN OUTPATIENT TREATMENT PROGRAM. HE IS
15:56:48 - Public Defender: Schwartz, Christopher
EXCITED ABOUT GETTING ENROLLED IN THAT PROGRAM. IT IS IMPORTANT FOR YOU TO
15:57:11 - Public Defender: Schwartz, Christopher
KNOW HOW FAR HE HAS COME IN 2 YEARS. PROBATION WILL SERVE ALL THOSE GOALS.
15:57:31 - Public Defender: Schwartz, Christopher
WE NEED TO SEE IF HE CAN SUCCEED ON FELONY PROBATION. HE WAS FOUND NOT
15:57:53 - Public Defender: Schwartz, Christopher
GUILTY ON ONE CHARGE, OBJECT TO ANY RESTITUTION ON THAT CHARGE.
15:58:10 - Judge: Hosack, Charles
I DON'T KNOW IF I HAVE SEEN A MEMORANDUM OF RESTITUTION.
15:58:23 - State Attorney: Swenson, Blake
RESERVE IT. I CAN SUBMIT ONE, I DON'T HAVE ONE WITH ME TODAY.
15:58:53 - Judge: Hosack, Charles
THIS IS THE TIME FOR THE COURT TO GO FORWARD WITH SENTENCE. IS THERE ANY
15:59:07 - Judge: Hosack, Charles
REASON WHY I SHOULD NOT GO FORWARD WITH SENTENCING?
15:59:19 - Defendant: GOSCH, KIRK JULLIARD
NO
15:59:20 - Judge: Hosack, Charles
GUILTY TO 3 COUNTS. MAXIMUM PENALTIY ON EACH IS 5 YEARS. THE STATE IS
15:59:51 - Judge: Hosack, Charles
RECOMMEDNIGN THE MAXIMUM SENTENCE. IMPOSE THE TERM, OR IMPOSE SENTENCE AND
16:00:13 - Judge: Hosack, Charles
PLCE YOU ON RETAIN OR POSSIBLE PROBATION. THERE IS CONCERN FROM THE COURTS
16:00:36 - Judge: Hosack, Charles
VIEW, RELUCTANT, OWN UP OR FACE UP TO RESPONSIBILTY. THE CASE HAS BEEN
16:00:59 - Judge: Hosack, Charles
PENDING FOR A LONG TIME. TERMS OF MEETING THE GOALS OF SENTENCING, JUST
16:01:16 - Judge: Hosack, Charles
IMPOSING A PRISON TERM, I DO FEEL THAT THE RECOMMENDATIONS THAT THE PSI
16:01:32 - Judge: Hosack, Charles
INVESTGATOR MADE IS THE WAY TO GO. THE BEST WAY TO MEET THE GOALS OF

16:01:48 - Judge: Hosack, Charles
SENTENCING. THE COURT VERY SELDOM DOES ANY LOCAL TIME FOR 180 DAYS. THIS

16:02:24 - Judge: Hosack, Charles
PARTICULAR CASE, THE RETAIN PROGRAM WOULD OFFER ANYTHING. WITH WORK RELEASE

16:02:41 - Judge: Hosack, Charles
AND TREATMENT RELEASE, CAN GET A HANDLE ON IF PROBATION CAN WORK. RETAIN

16:03:03 - Judge: Hosack, Charles
WOULD BE A WAY TO MEET THE GOALS OF SENTENCING. YOU DO HAVE GOOD EMPLOYMENT

16:03:17 - Judge: Hosack, Charles
AND TREATMENT. IMPOSE THE SENTENCE THAT THE STATE HAS RECOMMENDED. 180 DAYS

16:03:47 - Judge: Hosack, Charles
LOCAL. WORK AND TREATMENT RELEASE.

16:04:19 - Judge: Hosack, Charles
2 YEARS FIXED, 3 YEARS INDETERMINATE NTE 5 YEARS ON EACH CHARGE. SUSPEND

16:04:40 - Judge: Hosack, Charles
SENTENCE AND PLACE YOU ON PROBATION FOR 3 1/2 YEARS OF PROBATION. 180 DAYS

16:04:54 - Judge: Hosack, Charles
OF LOCAL TIME.

16:05:53 - Judge: Hosack, Charles
90 DAYS OF DISCRETIONARY TIME. ATTEND YOUR TREATMENT PROGRAM. OBTAIN AND

16:07:55 - Judge: Hosack, Charles
MAINTAIN FULL TIME EMPLOYMENT. COMPLY WITH RULES OF AND REGULATION OF IDOC,

16:08:44 - Judge: Hosack, Charles
SUPERVISION AT ANY LEVEL DEEMED APPROPRIATE. WILL LEAVE THE ISSUE WITH

16:09:23 - Judge: Hosack, Charles
RESTITUTION OPEN FOR 60 DAYS. NO VIOLATIONS OF LAWS OF STATE CITY US ETC.

16:09:55 - Judge: Hosack, Charles
CONSUME NO ALCOHOL DURING PROBATION. ENTER NO ESTABLISHMENT WHERE ALCOHOL

16:10:11 - Judge: Hosack, Charles
SOLD. ENTER NO HOME, BUSINESS OR OTHER PREMISES CONTAINING DRUGS AOR

16:10:26 - Judge: Hosack, Charles
OCCUPIED BY DRUG USERS. NO ASSOCIATION WITH INDIVIDUALS SPECIFIED BY P.P.

16:10:46 - Judge: Hosack, Charles
SUBMIT TO U/A OF BLOOD BREATH URINE AT OWN EXPENSE. DON'T PURCHASE POSSESS

16:11:07 - Judge: Hosack, Charles
OR USE SUBSTANCES WHICH ALTER TESTING FOR ALCOHOL/DRUGS

16:11:20 - Judge: Hosack, Charles
SUBMIT TO SEARCHES OF PROPERTY CAR AND RESIDENCE. WAIVE EXTRADITION TO THE

16:11:38 - Judge: Hosack, Charles
STATE OF IDAHO. SUBMIT TO PLOYGRAPH AT OWN EXPENSE. RESIDE IN IDAHO, 90 DAY

16:12:01 - Judge: Hosack, Charles
S DISCRETIONARY TIME

16:13:11 - Judge: Hosack, Charles
THIS IS ALL APPEALABLE. BAILIFF WILL GIVE YOU A NOTICE HERE. I WILL ALSO

16:13:27 - Judge: Hosack, Charles
GIVE YOU AN ORDER TO REPORT TO PROBATION. THIS ORDER STATES THAT YOU NEED TO

16:13:48 - Judge: Hosack, Charles
REPORT TODAY OR TOMORROW. THEY WILL RECEIVE A COPY OF THIS TODAY AFTER

16:14:04 - Judge: Hosack, Charles
COURT. IT STARTS RIGHT NOW. THEY NEED TO KNOW WHERE YOU LIVE AND WHAT YOU

16:14:19 - Judge: Hosack, Charles

ARE DOING. THEY WILL BE LOOKING FOR YOU IF YOU DON'T REPORT
16:14:51 - Judge: Hosack, Charles
YOU NEED TO PAY ATTENTION TO YOUR PO.

STATE V. _____
CASE NO. _____
Pled Guilty to _____
Found Guilty by Jury _____

DATE: _____

DEFENDANT SENTENCED AS FOLLOWS:

✓ COMMITTED TO CUSTODY OF THE IDAHO STATE BOARD OF CORRECTIONS
2 YEARS FIXED 3 YEARS INDETERMINATE, NTE 5 YEARS UNIFIED SENTENCE
AS TO _____
2 YEARS FIXED 3 YEARS INDETERMINATE, NTE 5 YEARS UNIFIED SENTENCE
AS TO _____
2 3 5
JURISDICTION IS RETAINED
RECOMMEND THERAPEUTIC COMMUNITY PROGRAM
RECOMMEND NEW DIRECTIONS PROGRAM
RECOMMEND SUBSTANCE ABUSE TREATMENT/COUNSELING
RECOMMEND COMMUNITY WORK CENTER
WITHHELD JUDGMENT FOR A PERIOD OF _____ YEARS, PLACED ON SUPERVISED PROBATION
FOR A PERIOD OF _____ YEARS
✓ JUDGMENT AND SENTENCE SUSPENDED & PLACED ON SUPERVISED PROBATION FOR 3 1/2 YRS

TERMS AND CONDITIONS OF PROBATION

✓ Court Costs 107.50 each ✓ Add'l Costs - 150 Prosecution 150 Defense 150 Dist. Court 288.50 (sex offenses) 103.50 (DUI) Comm. Service #1,000 Fine
✓ IDOC Costs
Restitution to Victims: _____ Juris. Reserved; PA has _____ days to submit; Stipulated to \$ _____
✓ Local Jail imposed
150 Days commencing _____
Credit for time served _____
Work release granted _____
Treatment release granted _____
In lieu of _____ days, serve _____
Community Service -- _____ hours -- _____ days per month for _____ consecutive months commencing _____; complete by _____
KC Sheriff's Labor Program -- _____ days commencing _____; complete by _____
✓ Attend rehab, educational & vocational programs
✓ Obtain and maintain full time employment and/or educational program
✓ Undergo substance abuse evaluation if requested by P&P
✓ Complete substance abuse/mental health counseling if requested by P&P
✓ Comply with rules and regulations of IDOC
✓ Supervision at any level deemed appropriate by P&P
✓ No violations of laws of State, City, U.S., etc.
✓ Consume no alcohol during probation
✓ Enter no establishment where alcohol sold
✓ Enter no home, business or other premises containing drugs or occupied by drug users
✓ No association with individuals specified by P&P
✓ No contact with victim or victim's family
✓ Submit to analysis of blood, breath, urine at own expense
✓ Don't purchase, possess or use substances which alter testing for alcohol/drugs
✓ Submit to searches of property, car and residence
✓ Waive extradition to the State of Idaho
✓ Submit to Polygraph at own expense
✓ Reside in Idaho
✓ 90 days discretionary time at discretion of P&P
✓ BOND EXONERATED
NO CONTACT ORDER CONTINUED IN FORCE AND EFFECT UNTIL _____; TERMINATED _____

SEX OFFENSES

Sex Offender Program _____
HIV test by _____
No association with juvenile _____
Not intimate with juvenile or parent of juvenile _____
Do not possess pornography or sexually explicit materials
thru any means, including computers _____
Comply with sexual offender registration laws _____
Not intimate with female who has minor female child _____

DUI OFFENSES

Submit to polygraph exam at request of therapist/P&P _____
Driving privileges suspended for _____ years _____
Permission to apply for temporary privileges
after _____ years _____
Surrender driver's license _____
Complete Victims Panel by _____
Interlock device on any vehicle operated
for _____ years/or until expiration of probation term _____

State of Idaho)
County of Kootenai) ss
Filed: 09/13/06
At: _____ o'clock PM
CLERK OF THE COURT
BY: [Signature]
Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,

Plaintiff,

Case No. CRF 2005-403

ORDER TO REPORT TO
PROBATION

vs.

Kirk Julliard Gosch
Defendant.

In Custody ☐ Yes
☒ No

DOB: [REDACTED]

TYPE OF HEARING

☐ RETAINED JURISDICTION

☒ SENTENCING 3 1/2 yrs probation

☐ PROBATION VIOLATION

IT IS ORDERED that not later than the next business day after the date of this order you must physically report to Probation & Parole, 202 Anton, Coeur d'Alene, Idaho (208/769-1444).

IT IS FURTHER ORDERED that your continued release is conditioned upon your making and keeping all appointments with Probation & Parole and complying with all conditions.

DATED this 13 day of Sept, 2006.

C W [Signature]
Judge

CERTIFICATE OF MAILING

I hereby certify that on the 13 day of September, 2006 copies of the foregoing Order were mailed, postage prepaid, or sent by facsimile or interoffice mail to:

Defense Attorney: Christopher Schwartz

☒ In Court

☐ Interoffice

☐ Mailed

Defendant: Kirk J. Gosch

☒ In Court

☐ Interoffice

☐ Mailed

Probation & Parole: Faxed 769-1481

☐ In Court

☐ Interoffice

☒ Faxed

Prosecuting Attorney: Blake Swenson

☒ In Court

☐ Interoffice

☐ Mailed

Other: _____

☐ In Court

☐ Interoffice

☐ Mailed

CLERK OF THE DISTRICT COURT, KOOTENAI COUNTY

BY: [Signature]
Deputy

ORDER TO REPORT TO PROBATION
Kirk Julliard Gosch

40895

DC 110 Rev. 3-06
312 of 362

STATE OF IDAHO } ss
COUNTY OF KOOTENAI
FILED: 09/13/06
AT _____ O'CLOCK _____ M
CLERK, DISTRICT COURT
DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

THE STATE OF IDAHO,)

Plaintiff,)

vs.)

Kirk Julliard Gosch)

Defendant.)

Case No. CR05-403

NOTIFICATION OF RIGHT
TO APPEAL (ICR 33 (a) (3))

TO: The Above Named Defendant:

YOU ARE HEREBY NOTIFIED, that sentence having been imposed, withheld, or suspended, you have a right to appeal this matter. Any notice of appeal must be filed within forty-two (42) days of the entry of the written judgment/order in this matter.

YOU ARE FURTHER NOTIFIED that if you are unable to pay the cost of an appeal, you have the right to apply for leave to appeal in forma pauperis or to apply for the appointment of counsel at public expense.

If you have questions concerning your right to appeal, you should consult with your present attorney.

C W Allen
JUDGE

I acknowledge receipt of a copy of this NOTICE on this 13 day of September 2006.

[Signature]
DEFENDANT

STATE OF IDAHO } ss
COUNTY OF KOOTENAI }
FILED: 9-20-06
AT 1:50 O'CLOCK P M
CLERK DISTRICT COURT
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,	)	CASE NO. CRF 2005-403
)	
Plaintiff,	)	JUDGMENT AND SENTENCING
	)	DISPOSITION
vs.)	
)	
KIRK JUILLARD GOSCH)	
DOB: [REDACTED])	
SSN: [REDACTED])	
)	
Defendant.)	

On September 13, 2006, before the Honorable Charles W. Hosack, District Judge, you, **KIRK JUILLARD GOSCH**, personally appeared for sentencing. Also appearing were Blake Swenson, Deputy Prosecuting Attorney for Kootenai County, Idaho, and your lawyer, Christopher Schwartz, Deputy Public Defender for Kootenai County, Idaho.

WHEREUPON, the previously ordered presentence report having been filed, and the Court having ascertained that you have had an opportunity to read the presentence report and review it with your lawyer, and you having been given the opportunity to explain, correct or deny parts of the presentence report, and having done so, and you having been given the opportunity to make a statement, and defendant having done so, and recommendations having been made by counsel for the State and by your lawyer, and there being no legal reason given why judgment and sentence should not then be pronounced, the Court did then pronounce its

JUDGMENT AND SENTENCING DISPOSITION: 1
CRF 2005-403 KIRK JUILLARD GOSCH

sentencing disposition as follows:

IT IS HEREBY ORDERED THAT YOU, KIRK JUILLARD GOSCH, after exercising your right to a jury trial, and the jury having entered a verdict of guilty to the criminal offense charged in the Information on file herein as follows:

COUNT II – MANUFACTURING A CONTROLLED SUBSTANCE
(MARIJUANA), a felony, Idaho Code §37-2732(a),

COUNT III – POSSESSION OF MARIJUANA WITH INTENT TO DELIVER, a
felony, Idaho Code §37-2732(a), and

COUNT IV – POSSESSION OF MARIJUANA IN EXCESS OF THREE OUNCES,
a felony, Idaho Code §37-2732(e),
that you, **KIRK JUILLARD GOSCH**, are guilty of the crime(s) so charged.

IT IS FURTHER ORDERED that you, **KIRK JUILLARD GOSCH**, are sentenced to the Idaho State Board of Correction as follows:

COUNT II -For a total unified sentence not to exceed five (5) years, commencing with a fixed period of two (2) years, to be followed by an additional indeterminate period of three (3) years,

COUNT III – For a total unified sentence not to exceed five (5) years, commencing with a fixed period of two (2) years, to be followed by an additional indeterminate period of three (3) years, and

COUNT IV – For a total unified sentence not to exceed five (5) years, commencing with a fixed period of two (2) years, to be followed by an additional indeterminate period of three (3) years,

JUDGMENT AND SENTENCING DISPOSITION: 2
CRF 2005-403 KIRK JUILLARD GOSCH

said sentences to run concurrently with each other.

IT IS FURTHER ORDERED that the execution of sentence be suspended for a period of three (3) years and six (6) months, during which time you will be on supervised probation.

IT IS FURTHER ORDERED that in the presence of your probation officer, you shall on a certified copy of this order endorse your receipt of a copy of this order and shall have initialed your acceptance, agreement, and consent to each of the terms and conditions contained in this order. Your probation officer shall return to the court the certified copy which contains your endorsement.

IT IS FURTHER ORDERED that you, **KIRK JULLIARD GOSCH**, comply with each of the following **TERMS AND CONDITIONS OF PROBATION**:

1. That you shall pay a fine of \$1,000.00.
2. That you shall pay court costs and fees of \$107.50 on each charge.
3. That you shall pay additional costs, fees, restitutions and reimbursements as follows:

f.	Reimburse defense costs	150.00
g.	Reimburse prosecution costs	150.00
h.	Reimburse the District Court Fund	150.00
4. All of the above sums shall be paid to the Kootenai County Clerk at the Kootenai County Courthouse, in monthly installments to be determined by your probation officer, based upon your ability to pay. Based upon a periodic review of your financial circumstances, your probation officer may increase or decrease the amount of your monthly payment, it being the intent that your financial obligations under this sentence be paid in full prior to your discharge

JUDGMENT AND SENTENCING DISPOSITION: 3
CRF 2005-403 KIRK JULLIARD GOSCH

from probation. All payments shall be made in the form of cash, cashier's check or money order.

The clerk shall distribute the payments in the priority set by the Idaho Supreme Court.

5. That you shall pay to the Idaho Department of Corrections its costs of supervision of your probation, in an amount not to exceed the maximum allowable by Idaho Code §20-225.

6. — That the Court shall reserve jurisdiction to determine the amount of restitution you shall pay in this matter. Once determined, restitution shall be paid on a scheduled to be determined by your probation officer as a term of your probation.

7. That you shall serve one hundred eighty (180) days local incarceration in the Kootenai County Jail commencing on September 22, 2006 at the hour of 5:00 P.M. Work release and treatment release is granted.

8. That you shall attend and complete any rehabilitation, educational, and vocational training programs as your probation officer may designate.

9. That you shall make every effort to obtain and maintain full time employment or be enrolled in a full time educational program.

10. That you shall undergo at your own expense a substance abuse evaluation if requested by your probation officer and you shall attend and successfully complete any substance abuse and mental health counseling which your probation officer may designate.

11. That you shall comply with all of the rules, regulations and requirements of the Idaho Department of Corrections.

12. That you will be supervised at any level deemed necessary by the Department of Correction, including the use of an electronic home monitoring device or interlock device.

JUDGMENT AND SENTENCING DISPOSITION: 4

CRF 2005-403 KIRK JULLIARD GOSCH

13. That you shall commit no violations of any law of the United States of America, or of any law of any other country, or of any law of any state county, city, or other political subdivision.

14. That you shall consume no alcoholic beverages during the period of your probation.

15. That you shall not enter any establishment wherein the primary source of revenue is the sale of alcoholic beverages.

16. That you shall not use or possess any controlled substances except pursuant to a valid prescription, nor enter any establishment or frequent any home, business, or other premises where there are illegal controlled substances or drug paraphernalia, or is occupied by or frequented by drug users.

17. That you shall not associate with any individuals specified by your probation officer.

18. That you shall submit to analysis of your blood, breath or urine at your own expense at the request of your probation officer or any law enforcement officer.

19. That you shall not purchase, possess, or use any substance intended to alter the results of urinalysis testing for the presence of controlled substances or alcohol.

20. That you shall submit to searches of your person, personal property, automobiles, and residence without a search warrant at the request of your probation officer.

21. By accepting this probation you do hereby waive extradition to the State of Idaho and also agree that you will not contest any effort by any State to return you to the State of Idaho.

JUDGMENT AND SENTENCING DISPOSITION: 5
CRF 2005-403 KIRK JULLIARD GOSCH

22. That you shall, at the request of your probation officer, submit to a polygraph examination at your expense.

23. If requested by your probation officer, you will be required to reside within the State of Idaho.

24. That in addition to any other local incarceration you are given ninety (90) days in the county jail to be served and imposed at the discretion of your probation officer and upon the written approval of the District Court.

IT IS FURTHER ORDERED that as long as you, **KIRK JUILLARD GOSCH**, abide by and perform all of the foregoing conditions, execution of the original judgment and sentence will continue to be suspended. If you violate any of the terms and conditions of your probation, you will be brought before the Court for execution of the balance of your sentence.

IT IS FURTHER ORDERED that any bail posted in this matter shall be exonerated, provided that any deposit shall be applied pursuant to **Idaho Code § 19-2923**.

NOTICE OF RIGHT TO APPEAL

YOU, KIRK JUILLARD GOSCH, ARE HEREBY NOTIFIED that you have a right to appeal this order to the Idaho Supreme Court. Any notice of appeal must be filed within forty-two (42) days of the entry of the written order in this matter.

YOU ARE FURTHER NOTIFIED that if you are unable to pay the costs of an appeal, you have the right to apply for leave to appeal in forma pauperis or to apply for the appointment of counsel at public expense. If you have questions concerning your right to appeal, you should consult your present lawyer.

JUDGMENT AND SENTENCING DISPOSITION: 6
CRF 2005-403 KIRK JUILLARD GOSCH

DATED this 18 day of September, 2006.


CHARLES W. HOSACK
DISTRICT JUDGE

RECEIPT BY DEFENDANT

I, **KIRK JULLIARD GOSCH**, hereby acknowledge receipt of a copy of the foregoing order and hereby accept and agree to the above terms and conditions of probation. By accepting this probation, I do hereby agree that if I am placed on probation to a destination outside the State of Idaho, or if I leave the confines of the State of Idaho, with or without the permission of my probation officer, I do hereby waive extradition to the State of Idaho. I further agree that I will not contest any effort by any State to return me to the State of Idaho.

DATED this _____ day of September, 2006.

DEFENDANT

WITNESS

CERTIFICATE OF MAILING/SERVICE

I hereby certify that on the 20 day of September, 2006, a copy of the foregoing Judgment and Sentencing Disposition was mailed, postage prepaid, faxed, or sent by interoffice mail to:

Fax Deputy Prosecuting Attorney for Kootenai County
Fax Deputy Public Defender for Kootenai County
Fax Probation & Parole (Fax: 769-1481)
Fax Kootenai County Sheriff's Department
20 Kootenai County Auditor

DANIEL ENGLISH
CLERK OF THE DISTRICT COURT

By 
Deputy Clerk

JUDGMENT AND SENTENCING DISPOSITION: 7
CRF 2005-403 KIRK JULLIARD GOSCH

**IDAHO DEPARTMENT OF CORRECTIONS
DIVISION OF COMMUNITY CORRECTIONS**

Probation and Parole, District No. 1
202 Anton, 1st Floor
Coeur d' Alene, Idaho 83815
(208) 769-1444

STATE OF IDAHO } SS
COUNTY OF KOOTENAI }
FILED:

2006 OCT 18 PM 4:48

REPORT OF PROBATION VIOLATION

CLERK DISTRICT COURT

DEPT. 
12/17

DATE: October 18, 2006

TO: Honorable Charles W. Hosack
Judge, First Judicial District
Kootenai County Courthouse

NAME: Gosch, Kirk Julliard

COURT CASE: CRF05-403

DOB: SSN: 

IDOC # 63663

ADDRESS: Unknown

OFFENSE: Manufacturing a Controlled Substance; Possession of Marijuana with Intent to Deliver; Possession of Marijuana in Excess of Three Ounces

DATE OF SENTENCE: 9/13/06

SENTENCE: Three and a half years

DATE OF PROBATION: 9/13/06

COUNTY: Kootenai

JUDICIAL DISTRICT: First

RULE VIOLATED

COURT ORDERED CONDITION NUMBER (7) which states: " That you shall serve one hundred eighty (180) days local incarceration in the Kootenai County Jail commencing on September 22, 2006 at the hour of 5:00 P.M. With release and treatment release is granted."

ALLEGATION ONE

That Mr. Gosch failed to turn himself in to the Kootenai County Jail on 9/22/06 at 5:00 P.M.

SUMMARY

Mr. Gosch did not notify his PO that he failed to turn himself in. He did not notify his PO what his reason was for not turning himself in.

REPORT OF VIOLATION

RE: Gosch, Kirk Julliard

DATE: October 18, 2006

IDOC: 63663

Page 2

RULE VIOLATED

AGREEMENT OF SUPERVISION CONDITION NUMBER (3) which states: "I will submit a truthful, written report to my supervising officer each and every month and shall report in person on dates and times specified."

ALLEGATION TWO

Mr. Gosch failed to attend an appointment at Probation and Parole for Orientation on 9/19/06. Mr. Gosch did not make any attempt to reschedule his appointment, nor offer any explanation as to why he was not in attendance. Mr. Gosch is avoiding supervision and has absconded.

SUMMARY

On 9/14/06, Mr. Gosch was notified he was to attend Orientation on 9/19/06.

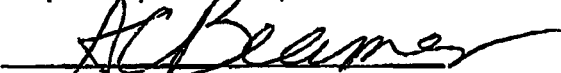
INTERMEDIATE SANCTIONS

Since being supervised on probation, Mr. Gosch has not received any intermediate sanctions since he has not reported.

RECOMMENDATION

Therefore I am of the opinion that Mr. Gosch has disregarded all community resources and programming that the Idaho Department of Correction has to offer and is not amenable to supervision in the community at this time. Therefore I would request a Bench Warrant in a substantial amount be ordered and an Order to Show Cause hearing be scheduled to determine if Kirk Julliard is in violation of his probation. If Mr. Gosch is found to be in violation of probation then it is my recommendation that his sentence be imposed.

Respectfully submitted,



Sandra C. Beamer

Sr. Probation/Parole Officer

APPROVED: 

Christine Jensen, Section Supervisor

REPORT OF VIOLATION

RE: Gosch, Kirk Julliard

DATE: October 18, 2006

IDOC: 63663

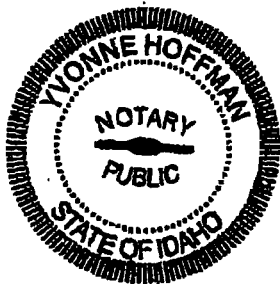
Page 3

THE ABOVE DOCUMENTED INFORMATION, WHICH IS IN WRITING, IS KNOWN BY ME TO BE

TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.


Sandra C. Beamer

SWORN AND SUBSCRIBED TO BEFORE ME, A NOTARY PUBLIC FOR THE STATE OF IDAHO, ON

THIS 18th DAY OF October 2006.
Notary PublicResiding at Coeur d'Alene, IdahoMy commission expires 10/28/09c KCCT - original
KCPA
KCPD
file

FAIL TO APPEAR

114171

October 1st, 2006

This is to inform you that the defendant, Kirk Julliard Gosch failed to turn into the Kootenai County jail as ordered for 180 days.

Docket number: CR05-403

Re: Failed to turn into the jail.

Sentenced: September 13th, 2006

Comments: Mr. Gosch failed to turn into the jail as ordered.

**D. Canfield
Booking Clerk**

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO

)
Plaintiff,)

vs.)

CASE NUMBER

CR05-403

)
AFFIDAVIT)

KIRK JULLIARD GOSCH)

)
CHARGE: 20-222 P.V.)

STATE OF IDAHO)

) ss.

COUNTY OF KOOTENAI)

I, Daisie Canfield being first duly sworn, depose and say:

- 1 That I am the Booking Clerk for the Public Safety Building
- 2 That I have access to the records and files on the above named defendant. Attached hereto and incorporated herewith is a copy of an incident report concerning the subject matter of this Affidavit.
- 3 That our file on the above named Defendant contains an Order of the above named court requiring the Defendant to:
(X) report to jail on 09/22/2006
() sign up for the work program by _____
4. That the above Defendant has failed to comply with the Order by:
(X) not reporting to jail to serve his/her sentence.
() by failing to report to the work program director to schedule service on the Sheriff's Labor Program.
() by signing up for the Sheriff's Labor Program, but failing to appear at the work site on the date and time assigned by the work director.
() Other: FAILED TO RETURN TO JAIL TO FINISH HIS JWO SENTENCE
- 5 That the records of this case show that the Defendant had personal knowledge of said order.

Affiant

SUBSCRIBED AND SWORN to before me this

1ST _____, OCTOBER _____, 2006

NOTARY PUBLIC FOR IDAHO

Commission expires: _____

Court Minutes:

Session: Burton110306I
Session Date: 11/03/2006
Judge: Burton, Robert
Reporter:

Division: MAG
Session Time: 13:53

Courtroom: Courtroom6

Clerk(s): Carroll, Theresa

State Attorney(s):
Blair, Lacey
Brooks, Ken

Public Defender(s):

Prob. Officer(s):

Court interpreter(s):

Theresa Carroll

Case ID: 0019

Case number: CR2005-403
Plaintiff:
Plaintiff Attorney:
Defendant: GOSCH, KIRK
Pers. Attorney:
Co-Defendant(s):
State Attorney: Brooks, Ken
Public Defender:

11/03/2006

14:40:13

Recording Started:

14:40:13

Case called

14:40:21

Judge: Burton, Robert
CALLS CASE- ARRN

14:40:26

CR06-21003 - REVIEW CHARGES AND PENALTIES

14:40:37

BOND IS SET AT \$2,000.00

14:40:54

CR06-23844 - REVIEW CHARGES AND PENALTIES

14:42:00
14:43:14 **Defendant: GOSCH, KIRK**
HOW MANY CHARGES ?
14:43:19 **Judge: Burton, Robert**
4 CHARGES - REVIEW THEM
14:43:35 CR06-23844 SET PH WITH IN 14 DAYS
14:43:49 CR05-403 B/W JUDGE HOSACK - NO BAIL VIOL OF
PROB
14:44:04 REFER TO JUDGE HOSACK
14:44:08 APPT PD ON ALL CASES
14:44:20 CR06-23844 BOND
14:44:29 **State Attorney: Brooks, Ken**
150,000.00 - DEF COULD GO TO PRISON FOR LIFE
14:45:00 **Judge: Burton, Robert**
14:45:22 CR06-23844 - \$150,000.00
14:45:49 **Stop recording**

Court Minutes:

Session: Hosack112006A
Session Date: 11/20/2006
Judge: Hosack, Charles
Reporter: Schaller, Joann

Division: DIST
Session Time: 08:22

Courtroom: Courtroom9

Clerk(s): Jokela, Pam

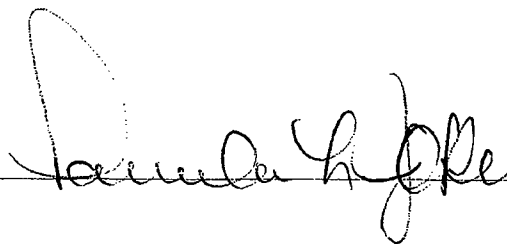
State Attorney(s): Verharen, Art

Public Defender(s):

Chapman, Brad
Lawlor, Edward
Neils, Martin
Siegel, Val

Prob. Officer(s):

Court interpreter(s):



Case ID: 0002

Case number: CR2005-403

Plaintiff:

Plaintiff Attorney:

Defendant: GOSCH, KIRK JULLIARD

Pers. Attorney: Brennan, Monica

Co-Defendant(s):

State Attorney: Verharen, Art

Public Defender:

11/20/2006

10:51:38

Recording Started:

10:51:38

Case called

10:51:43 **Judge: Hosack, Charles**
CALLS CASE

10:51:47 **Add Ins: PROBATION VIOLATION**

10:51:48 **Add Ins: IN CUSTODY**

10:51:49 **State Attorney: Verharen, Art**

10:51:57 **Pers. Attorney: Brennan, Monica**

10:52:05 **Judge: Hosack, Charles**
PROBATION VIOLATION REPORT 10/18/06 ENTERING
DENIALS TO EACH VIOLATION FROM

10:52:25 THE REPORT

10:52:29 **Pers. Attorney: Brennan, Monica**
SINCE, I HAVE NOT SEEN THE REPORT, WE ARE GOING
TO BE WORKING ON CONSOLIDATED

10:52:49 DEAL WITH THE STATE.

10:52:55 **Judge: Hosack, Charles**
HAVE YOU SEEN THE REPOT

10:53:00 **Defendant: GOSCH, KIRK JULLIARD**
NO

10:53:01 **Judge: Hosack, Charles**
VIOLAT 1 - FAILED TO TURN YOURSELF IN AT THE
JAIL. VIOL 2 - FAILED TO APPEAR

10:53:24 FOR AN APPOINTMENT.

10:53:31 **Defendant: GOSCH, KIRK JULLIARD**
THAT IS CORRECT. ENTER DENIALS.

10:53:37 **Judge: Hosack, Charles**
WE WILL SET THIS OVER FOR EVIDENTIARY HEARING ON
10 AM 12/06/06.

10:54:41 **Stop recording**

Court Minutes:

Session: HOSACK120606A

Division: DIST

Courtroom: Courtroom9

Session Date: 12/06/2006

Session Time: 09:52

Judge: Hosack, Charles

Reporter: Schaller, Joann

Clerk(s): Rohrbach, Shari

State Attorney(s): Raap, Marty

Public Defender(s):

Nelson, Lynn

Siegel, Val

Taylor, Anne

Prob. Officer(s):

Court interpreter(s):

Case ID: 0003

Case number: CR2005-403

Plaintiff:

Plaintiff Attorney:

Defendant: Gosch, Kirk

Pers. Attorney: Smith, Ian

Co-Defendant(s):

State Attorney: Raap, Marty

Public Defender:

12/06/2006

10:34:23

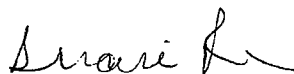
Recording Started:

10:34:23

Case called

10:34:32

Judge: Hosack, Charles



Calls, def in custody. Evid Hrg. Also CR06-23844.

10:34:47 **State Attorney: Raap, Marty**

10:34:51 **Pers. Attorney: Smith, Ian**

10:35:18 Here on behalf of Ms Flood-Brennan. Def isn't comfortable with me, Ask for a

10:36:18 continuance for a plea and sentencing. State has indicated no obj.

10:36:44 **State Attorney: Raap, Marty**

My intent was to do the plea today, I think we have a deal, could continue

10:37:42 both.

10:37:48 **Pers. Attorney: Smith, Ian**

Could enter pleas today, would the court proceed to sentencing?

10:38:22 **Judge: Hosack, Charles**

Comments re: the agreement, I gave the def a huge break last time, he never

10:38:57 showed up for jail and now he has new charges.

Do you really think I'm going

10:39:18 to do a retained?

10:39:27 **Pers. Attorney: Smith, Ian**

Not now.

10:40:01 I'm not prepared to proceed to sentencing today.

10:40:21 **Judge: Hosack, Charles**

Grant motion to continue 05-403 to 12-14-06 @ 3:00, and set plea confirmation

10:41:45 and sentencing in new case at the same time.

10:42:43 **Stop recording**

Court Minutes:

Session: HOSACK121406P
Session Date: 12/14/2006

Division: DIST
Session Time: 14:49

Courtroom: Courtroom9

Judge: Hosack, Charles
Reporter: Schaller, Joann

Clerk(s): Rohrbach, Shari

State Attorney(s):
Mattison, Lindsey
Sterett, Reese

Public Defender(s):
Lawlor, Edward
Siegel, Val
Taylor, Anne

Prob. Officer(s):

Court interpreter(s):

Case ID: 0002

Case number: CR2006-23844 *~ CR 05-403*

Plaintiff:

Plaintiff Attorney:

Defendant: Gosch, Kirk

Pers. Attorney: Brennan, Monica

Co-Defendant(s):

State Attorney: Sterett, Reese

Public Defender:

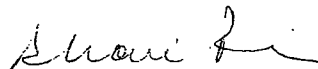
12/14/2006

15:17:43

Recording Started:

15:17:43

Case called



15:17:49 **Judge: Hosack, Charles**
Calls, def in custody. ARRN and CR2005-403 PV.

15:18:28 **State Attorney: Sterett, Reese**

15:18:43 **Pers. Attorney: Brennan, Monica**
He will enter admissions on the PV today and ask
disp be set after he knows

15:19:41 **Pers. Attorney: Brennan, Monica**
what will happen with the other felony.

15:19:54 **Judge: Hosack, Charles**
Set 06-23844 for trial?

15:20:07 **State Attorney: Sterett, Reese**
Yes

15:20:09 **Pers. Attorney: Brennan, Monica**
Yes

15:20:12 **Judge: Hosack, Charles**
Questions def regarding PV allegations.

15:20:28 **Defendant: Gosch, Kirk**
I've seen the PV report, admit.

15:20:41 **Judge: Hosack, Charles**
Accept admissions. PV disp: 1-9-07 @ 3:00. Two
day trial in Feb 12, PTC 2-8 @

15:23:30 2:30.

15:24:30 **Stop recording**

Court Minutes:

Session: HOSACK010907P

Session Date: 01/09/2007

Judge: Hosack, Charles

Reporter:

Division: DIST

Session Time: 14:39

Courtroom: Courtroom9

Clerk(s): Rohrbach, Shari

State Attorney(s): Brooks, Ken

Public Defender(s):

Lawlor, Edward

Purviance, Larry

Siegel, Val

Prob. Officer(s):

Court interpreter(s):

Case ID: 0006

Case number: CR2005-403

Plaintiff:

Plaintiff Attorney:

Defendant: Gosch, Kirk

Pers. Attorney: Brennan, Monica

Co-Defendant(s):

State Attorney: Brooks, Ken

Public Defender:

01/09/2007

15:48:49

Recording Started:

15:48:49

Case called

15:49:15

Judge: Hosack, Charles

Calls, def in custody. PV Disp.

15:49:25 **State Attorney: Brooks, Ken**

15:49:28 **Pers. Attorney: Brennan, Monica**

15:49:50 Ready to proceed, offer made yesterday for a
global resolution. Would make
15:50:32 sense to have sentencing on all matters at once.

15:51:02 **Judge: Hosack, Charles**
I don't have any other files.

15:51:11 **State Attorney: Brooks, Ken**
The other case is set for Feb.

15:51:54 **Pers. Attorney: Brennan, Monica**
He's charged in 06-23844 w/elud and deliver,
state will P/G to elud, state
15:52:29 will dismiss habitual, deliver and county misd.
and file no PV.

15:53:05 **Judge: Hosack, Charles**
Set plea confirm for elud?

15:53:23 **Pers. Attorney: Brennan, Monica**
Yes.

15:54:33 **State Attorney: Brooks, Ken**
Agree.

15:54:51 **Judge: Hosack, Charles**
Set for 11:00 on 1-10-07.

15:56:18 **Public Defender:**

15:56:19 **Pers. Attorney: Brennan, Monica**
Ask if def could hold his daughter that was born
yesterday.

15:56:46 **Other: Bailiff**
No.

15:56:51 **Stop recording**

Court Minutes:

Session: HOSACK011107A
Session Date: 01/11/2007
Judge: Hosack, Charles
Reporter: Schaller, Joann

Division: DIST
Session Time: 11:00

Courtroom: Courtroom9

Clerk(s): Rohrbach, Shari

State Attorney(s): Verharen, Art

Public Defender(s):

Prob. Officer(s):

Court interpreter(s):

Case ID: 0001

Case number: CR2005-403

Plaintiff:

Plaintiff Attorney:

Defendant: Gosch, Kirk

Pers. Attorney: Brennan, Monica

Co-Defendant(s):

State Attorney: Verharen, Art

Public Defender:

01/11/2007

11:03:21

Recording Started:

11:03:21

Case called

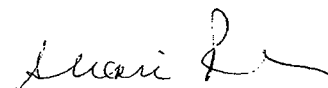
11:03:34

Judge: Hosack, Charles

Calls, def in custody. PV. And 2006-23844 for a
plea confirmation.

11:04:10

State Attorney: Verharen, Art



11:04:17 **Pers. Attorney: Brennan, Monica**

11:04:24 **State Attorney: Verharen, Art**
Have agreement for admissions and plea in new case.

11:05:08 I'm ready to proceed on both cases.

11:05:23 **Judge: Hosack, Charles**
If parties are ready to proceed and the def waive the PSI we can go forward.

11:05:52 **Pers. Attorney: Brennan, Monica**
I'm ready.

11:05:55 **State Attorney: Verharen, Art**

11:06:22

11:06:33 **Judge: Hosack, Charles**
Reviews plea agreement, strike Cts 2 and 3 and Part II.

11:07:44 **Pers. Attorney: Brennan, Monica**
And the state has no objection to an Alford plea.

11:07:59 **Judge: Hosack, Charles**
Explains Alford plea to def.

11:10:27 **Defendant: Gosch, Kirk**
I understand.

11:10:36 **State Attorney: Verharen, Art**
I think defense will stip that there is sufficient evidence for the plea.

11:10:53 **Pers. Attorney: Brennan, Monica**
Yes.

11:10:59 **Judge: Hosack, Charles**
Reviews with def.

11:11:31 **Defendant: Gosch, Kirk**
I understand.

11:12:00 **Judge: Hosack, Charles**
I've amended the Information, crime is felony
eluding, gives penalties. Reads
11:13:08 charge.
11:15:30 **Defendant: Gosch, Kirk**
Not taking any medications, went to high school
and junior college.
11:17:00 Understand rights. P/G to felony eluding.
11:19:12 **Judge: Hosack, Charles**
Reviews plea agreement with def., open recomm
from the state.
11:19:42 **Defendant: Gosch, Kirk**
I understand.
11:21:22 **Judge: Hosack, Charles**
Accept plea. Will proceed on both cases.
Questions def regarding update to
11:22:08 PSI.
11:22:25 **Defendant: Gosch, Kirk**
I understand that option. Will waive update to
PSI.
11:23:29 **Judge: Hosack, Charles**
Will go forward with PV disp and sentencing.
11:23:49 **Pers. Attorney: Brennan, Monica**
Call Sharon Gosch
11:24:26 **Other: Gosch, Sharon**
I'm Kirk's Mom, live in Dalton. We moved here
from CA 13 years ago. He had a
11:25:15 new baby born on the 7th. He has plans to marry.
RE: his attitude he needed
11:25:55 to grow up, comments. I think he has a problem
with pot, not drinking or
11:27:53 using meth. I think he's reflecting from the
inside out, he's opened up. He
11:29:57 has huge family support. He'd probably do
drywall for employment. Reads
11:31:28 letter.
11:32:58 **State Attorney: Verharen, Art**

No questions.

11:33:21 **Pers. Attorney: Brennan, Monica**
Call Kasie Gordon

11:33:49 **Other: Gordon, Kasie**
Sworn by clerk. I'm his fiance. I've known him
for 4 years, engaged for 2
11:34:18 years. We were going to get married when the
baby was born but I don't know
11:34:36 now. I've seen a lot of changes in def the 4
years. I know he wants to take
11:35:18 care of his baby and me. His friends are not the
right friends for him. I thi
11:35:52 nk he has a problem with smoking marij, he never
drinks. I watched the video
11:36:40 tape in this case, comments. He didn't show up
to P&P because we were havin
11:37:26 g a really hard time. I didn't know he had a
warrant out. He was working
11:38:15 then. His work is willing to take him back. He'd
live with me at Stateline
11:38:46 Rd, at my mother's. I'll return to work soon.
Reads letter.

11:39:52 **State Attorney: Verharen, Art**
No questions.

11:40:26 **Defendant: Gosch, Kirk**
I know I made a big mistake, you gave me a huge
opportunity and I made a big
11:40:51 mistake. Apologize for lack of respect.

11:41:20 **State Attorney: Verharen, Art**
The first offer was a rider and the court was
not willing to go along with
11:42:06 that. With the underlying case it showed the def
had a large amount of marij
11:42:49 and was selling. There were 3 serious drug
offenses. The court put the def on
11:43:36 prob. with local jail. Now we have the new plea
agreement. I still think you
11:44:22 need to send def to prison. He didn't even
bother with showing up for
11:44:53 probation or jail and then another felony.
Recomm prison, for the new case

11:45:42 sentence him to 3 fixed and leave indet to the court and concurr.

11:46:00 **Pers. Attorney: Brennan, Monica**
I wasn't here for the trial but I understand he was convicted. He hasn't

11:46:46 served much jail and hasn't had the opportunity for classes or treatment,

11:47:05 comments. Comments on eluding incident, he wasn't driving his own car. He

11:51:35 seem to have a felony problem with marij. Ask rider, he's been in custody

11:52:30 about 90 days. He'd benefit from thinking errors program, he needs to grow up.

11:53:07 He has love and support of family. Recomm rider and see how he does. Ask the

11:54:35 court give him one more chance.

11:55:19 **Judge: Hosack, Charles**
Is the time for sentencing in the new case. Comments regarding new case, I

11:56:41 don't know much about that case. But in the other case you didn't even show

11:57:02 up at the jail. Just flat blew it off. In a sense and as far as I'm concerned

11:59:00 I basically gave you a retained juris. thinking you were going to take

11:59:21 advantage of it. Comments. Didn't report to probation followed by a new

12:00:20 felony. Need to go to term. Question is do I need to do a modification. If

12:04:23 you don't do what you're supposed to do there are serious consequences.

12:04:56 Recomm substance abuse programs and CWC. Will shorten fixed term, impose 5

12:05:59 yrs. on new case, modify earlier sentence to 1 yr fixed and 4 indet., On new

12:07:52 case: 5 yrs., 1 yr fixed and 4 indet, concurr. Recomm counseling and CWC. All

12:08:57 counts are concurr.

12:11:03 **Stop recording**

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

State of Idaho

vs.

STATE OF IDAHO } SS
COUNTY OF KOOTENAI }
FILED: 1-11-07
AT 5:00 O'CLOCK P M
CLERK, DISTRICT COURT
DEPUTY

Case no. CRF 06-23844

PRETRIAL SETTLEMENT OFFER

OFFER EXPIRES 14 DAYS AFTER PRELIM. DATE

or other ()

The State offers that in exchange for Defendant's guilty plea(s) to:

Count	Charge	Statutory Maximum Penalty
1	FELONY SENDING	5 YRS

and Defendant's agreement to:

☒ Waive appeal as of right as to conviction and sentence.

☒ Pay restitution: PER STATUTE

☒ Other agreements: Waive Prelim. Hearing

It will agree and recommend as follows:

☐ Agreed sentence recommendation: _____

☒ Sentence recommendation: OPEN

☐ To dismiss/not file sentence enhancement/habitual

☒ To dismiss: COUNT 2, COUNT 3 AND PART 2 AS WELL AS ANY PENDING KOOTENAI COUNTY MISD. CHARGES

☐ Other agreement: _____

NOTE: THE STATE'S SENTENCE RECOMMENDATION IS CONDITIONED UPON NO FTAs (INCLUDING PRE-SENTENCE INTERVIEW) AND NO NEW CRIMINAL OFFENSES BEFORE DATE OF SENTENCING.

Dated: 1/4/07

Dep. Prosecuting Attorney

REJECTION OR ACCEPTANCE OF PRETRIAL SETTLEMENT OFFER

☐ I REJECT THE ABOVE PRETRIAL SETTLEMENT OFFER.

☒ I ACCEPT THE ABOVE PRETRIAL SETTLEMENT OFFER AND WAIVE THE FOLLOWING RIGHTS:

1. The right to a jury or court trial.
2. The right to be presumed innocent unless proven guilty beyond a reasonable doubt.
3. The right to confront and question the witnesses against me.
4. The right to compel witness to come to court and testify for me.
5. The right to remain silent.
6. The right to appeal as of right as to conviction and sentence.

Defendant

Date

Defense Attorney

Date

STATE OF IDAHO } SS
COUNTY OF KOOTENAI
FILED: 1-11-07
AT 5:20 O'CLOCK PM
CLERK, DISTRICT COURT
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

THE STATE OF IDAHO,

Plaintiff,

vs.

Kirk J. Gosch

Defendant.

Case No.

CR05-403

CR06-23844

NOTIFICATION OF RIGHT
TO APPEAL (ICR 33 (a) (3))

TO: The Above Named Defendant:

YOU ARE HEREBY NOTIFIED, that sentence having been imposed, withheld, or
suspended, you have a right to appeal this matter. Any notice of appeal must be filed within
forty-two (42) days of the entry of the written judgment/order in this matter.

YOU ARE FURTHER NOTIFIED that if you are unable to pay the cost of an appeal,
you have the right to apply for leave to appeal in forma pauperis or to apply for the appoint-
ment of counsel at public expense.

If you have questions concerning your right to appeal, you should consult with your
present attorney.


JUDGE

I acknowledge receipt of a copy of this NOTICE on this 11th day of Jan, 20 07.


DEFENDANT

FILED 1-16-07 AT 10:15 A.M.
STATE OF IDAHO, COUNTY OF KOOTENAI SS
CLERK OF THE DISTRICT COURT
BY Barbara Mallett DEPUTY

FIRST JUDICIAL DISTRICT COURT, STATE OF IDAHO
IN AND FOR THE COUNTY OF KOOTENAI
324 W. GARDEN AVENUE
COEUR D'ALENE, IDAHO 83814

STATE OF IDAHO
Plaintiff,

vs.

Kirk Julliard Gosch
Defendant.

DOB:
DL or SSN:



Case No: CR2005-403
CR2006-23844

JUDGMENT ON PROBATION
VIOLATION

On January 11, 2007, before the Honorable Charles W. Hosack, District Judge, you, Kirk Julliard Gosch, personally appeared for a dispositional hearing on a probation violation as alleged in the Report of Violation dated October 18, 2006. Also appearing were Art Verharen, Deputy Prosecuting Attorney for Kootenai County, Idaho and your counsel, Monica Marie Flood Brennan.

The Court having found that you have violated your probation as alleged, and you having been given the opportunity to explain or comment concerning disposition and recommendations having been made by counsel for the State and by your attorney, the Court did then pronounce its disposition as follows:

IT IS HEREBY ORDERED that probation is revoked and your sentence is imposed and modified for each count as follows:

Idaho Code §37-2732 B(A)(1) Drug-trafficking In Marijuana, a felony,
Idaho Code §37-2732(A)(1)(A) Possession of a Controlled Substance With
Intent to Manufacture or deliver, a felony,
Idaho Code §37-2732(E) Possession of a Controlled Substance, Marijuana
More Than 3 ounces, a felony;

for a total unified sentence not to exceed five (5) years, commencing with a fixed term of one (1) year, to be followed by an additional four (4) years indeterminate sentence. All counts shall run concurrent.

IT IS FURTHER ORDERED the above sentence shall run concurrent with Kootenai CR2006-23844 wherein you personally appeared on January 11, 2007, for entry of a guilty plea to the criminal offense of:

Idaho Code §49-1404 Eluding a Peace Officer, a felony.

After entry of your plea you then waived your right to a presentence report and were sentenced as follows:

for a total unified sentence not to exceed five (5) years, commencing with a fixed term of one (1) year, to be followed by an additional four (4) years indeterminate sentence.

IT IS FURTHER ORDERED your license is suspended for one (1) year commencing from the date sentence was imposed.

IT IS THE RECOMMENDATION OF THIS COURT that you be allowed to participate in the Community Work Center or any substance abuse treatment and/or counseling available through the Department of Correction during the period of incarceration.

IT IS FURTHER ORDERED that the defendant is committed to the custody of the Idaho State Department of Correction and is hereby remanded to the custody of the Kootenai county Sheriff pending transport to the Department of Corrections.

IT IS FURTHER ORDERED that any bail posted in this matter shall be exonerated, provided that any deposit shall be applied pursuant to Idaho Code 19-2923.

IT IS FURTHER ORDERED you shall be given credit for time served.

NOTICE OF RIGHT TO APPEAL

YOU ARE HEREBY NOTIFIED that you have a right to appeal this order to the Idaho Supreme Court. Any notice of appeal must be filed within forty-two (42) days of the entry of the written order in this matter.

YOU ARE FURTHER NOTIFIED that if you are unable to pay the costs of an appeal, you have the right to apply for leave to appeal in forma pauperis or to apply for the appointment of counsel at public expense. If you have questions concerning your right to appeal, you should consult your present lawyer.

DATED this 12 day of January, 2007.



Charles W. Hosack
DISTRICT JUDGE

CERTIFICATE OF MAILING/SERVICE

I hereby certify that on the 16 day of January, 2007, a copy of the foregoing Judgment on Probation Violation was mailed, postage prepaid, faxed, or sent by interoffice mail to:

For Deputy Prosecuting Attorney for Kootenai County (fax 208-446-1833)
For Defense Attorney Monica Flood Brennan (fax 208-676-8288)
For Probation & Parole (fax 208-769-1481)
For Kootenai County Sheriff's Department (fax 208-446-1407)
For Idaho Department of Correction (fax 208-327-7445)
For Idaho Department of Transportation (fax 208-334-8739)

DANIEL ENGLISH
CLERK OF THE DISTRICT COURT

By 
Deputy Clerk

Sean P. Walsh
CONFLICT PUBLIC DEFENDER
ANDERSON WALSH, PLLC
500 N. Government Way, Suite 100
Coeur d'Alene, ID 83814
Phone: 208-665-7400
Fax: 208-765-4636
ISBN: 7235

STATE OF IDAHO } ss
COUNTY OF KOOTENAI
FIXED: 3-12-13
AT 3:12 O'CLOCK P.M.
CLERK/DISTRICT COURT
DEPUTY

Attorney for Defendant

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,)	
)	
Plaintiff,	)	CASE NUMBER CR-2005-0000403
)	
V.)	
	)	AMENDED JUDGMENT
KIRK J GOSCH,)	
)	
Defendant.)	
)	

An Amended judgment having been entered in Kootenai County Case No. CV-2007-5443 now therefore Plaintiff may perfect his appeal from the conviction and sentence in this case by filing a notice of appeal within forty-two (42) days of today's date. All other terms and conditions of the previous judgment entered in this case remain in full force and effect.

DATED this 12 day of March, 2013.


JUDGE SIMPSON

CERTIFICATE OF SERVICE

I hereby certify that on the 12 day of March, 2013, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

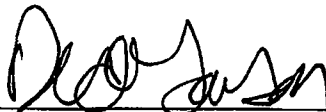
Kootenai County Prosecuting Attorney
208-446-1833

☐ U.S. Mail
☐ Hand Delivered
☒ Fax
☐ Overnight Mail

Sean P. Walsh
Attorney for Defendant
208-765-4636

☐ U.S. Mail
☐ Hand Delivered
☒ Fax
☐ Overnight Mail

4094



6299

SEAN P. WALSH
 CONFLICT PUBLIC DEFENDER
 Attorney at Law
 ANDERSON WALSH PLLC
 500 N Government Way, Suite 100
 Coeur d'Alene, ID 83814
 Phone: 208-665-5658
 Fax: 208-765-4636
 ISBN: 7235

STATE OF IDAHO
 COUNTY OF KOOTENAI } SS
 FILED:

2013 MAR 13 AM 10:55

CLERK DISTRICT COURT
Amanda
 DEPUTY

Attorneys for Defendant

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI COUNTY**

STATE OF IDAHO,)	
	)	CASE NUMBER CR-2005-00403
Plaintiff,)	
	)	NOTICE OF APPEARANCE PER
V.	)	APPOINTMENT
)	
KIRK GOSCH,)	
)	
Defendant.)	

NOTICE IS HEREBY GIVEN that Sean P. Walsh of the law firm ANDERSON WALSH PLLC, 500 N. Government Way, Suite 100, Coeur d'Alene, ID 83814, hereby appears for and on behalf of the above-named Defendant in the above-entitled matter, per Appointment by Judge Simpson on March 12, 2013. All documentation and matters relating to the above-entitled case should be directed to the undersigned attorney.

Notice is given that the Defendant herewith asserts all rights accorded him or her under the Fifth, Sixth, and Fourteenth Amendments to the Constitution of the United States and under Article I, § 13 of the Constitution of the State of Idaho and all prophylactic measures imposed upon the State pursuant to said constitutional provisions; including, but not necessarily limited to, the right to remain silent and the right to

counsel. NO AGENT OF THE STATE OR PERSON ACTING IN SUCH CAPACITY
IS TO QUESTION THE DEFENDANT IN REGARD TO ANY ACT, WHETHER
CHARGED OR UNCHARGED.

DATED this 12 day of March, 2013.

ANDERSON WALSH, PLLC



SEAN P. WALSH
Attorney at Law

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of March, 2013, I caused to be served a
true and correct copy of the foregoing by the method indicated below, and addressed to
the following:

Kootenai County Prosecutors
FAX: (208) 446-1833

- ☐ U.S. Mail
- ☐ Hand Delivered
- ☒ Fax
- ☐ Overnight Mail



6745
SEAN P. WALSH
CONFLICT PUBLIC DEFENDER
Anderson Walsh PLLC
500 N. Government Way, Suite 100
Coeur d'Alene, Idaho 83814
Phone: (208) 665-7400
Fax: (208) 765-4636
ISBN: 7235

RECEIVED
CLERK DISTRICT COURT
2013 APR 12 A 9:39

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED:

2013 MAR 25 AM 11:40

CLERK DISTRICT COURT

Cindy O. Bailey
DEPUTY

Attorney for Defendant/Appellant

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,

Plaintiff/
Respondent,

V.

KIRK J. GOSCH,

Defendant/
Appellant.

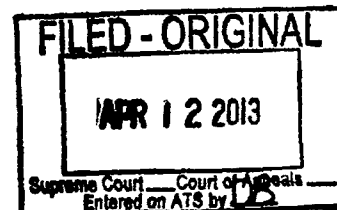
CASE NUMBER CR-05-00403

NOTICE OF APPEAL

Supreme Court No. 40895

**TO: THE ABOVE NAMED RESPONDENT, STATE OF IDAHO, AND THE
CLERK OF THE ABOVE ENTITLED COURT:**

1. The above named Appellant hereby appeals against the above named Respondent, the State of Idaho, to the Idaho Supreme Court the Memorandum Opinion and Order denying Motion to Suppress entered in the above entitled matter on January 30, 2006, the Motions denied in the above entitled matter on February 17, 2006, and the Verdict entered in the above entitled matter on September 13, 2006, the Honorable Judge Benjamin R. Simpson, presiding.



2. That the party has a right to appeal to the Idaho Supreme Court, and the Judgment described above in paragraph one, is an appealable Judgment under and pursuant to Idaho Appellate Rule 11(c).

3. The issues Appellant intends to assert in this appeal include, but are not necessarily limited to:

Whether the evidence presented at the jury trial was sufficient to convict Defendant, and whether the Court abused its discretion in denying Defendant's pretrial motions, trial motions, and motion to suppress.

4. Appellant requests the preparation of the entire reporter's standard transcript as defined in Rule 25 I.A.R., and to also include the following, pursuant to Rule 25 (b):

- a. ^{Pre-Trial} Transcripts of Motions hearing held on December 1, 2005, court reporter JoAnn Schaller;
- b. ^{Suppress/Himine} Transcript of Motions hearing held on January 13, 2006, court reporter JoAnn Schaller;
- c. ^{Intelocutory} Transcripts of Motions hearing held on February 17, 2006, court reporter JoAnn Schaller;
- d. Transcript of day one of jury trial held on July 25, 2006, court reporter JoAnn Schaller;
- e. Transcript of day two of jury trial held on July 26, 2006, court reporter JoAnn Schaller;
- f. Transcript of day three of jury trial and verdict held on July 27, 2006, court reporter JoAnn Schaller;

g. Transcript of sentencing held on September 13, 2006, court reporter JoAnn Schaller;

5. The Appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28 I.A.R.: None

6. I hereby certify as follows:

A. A copy of this Notice of Appeal has been served upon all court reporters from whom a transcript is requested. The name and address of each such reporter is marked below in the Certificate of Service.

B. The Appellant is exempt from paying the estimated transcript fee because the Appellant is an indigent who is represented by a Conflict Public Defender pursuant to Court Appointment.

C. The Appellant is exempt from paying the filing fee because the Appellant is an indigent who is represented by a Conflict Public Defender pursuant to Court Appointment..

D. The Appellant is exempt from paying the estimated fee for the preparation of the record because the Appellant is an indigent who is represented by a Conflict Public Defender pursuant to Court Appointment.

E. Service has been made upon all parties required to be served pursuant to Rule 20 I.A.R., to wit the Kootenai County Prosecuting Attorney, and the Attorney General of Idaho pursuant to Section 67-1401 (1) Idaho Code.

DATED this 25 day of March, 2013.

BY:

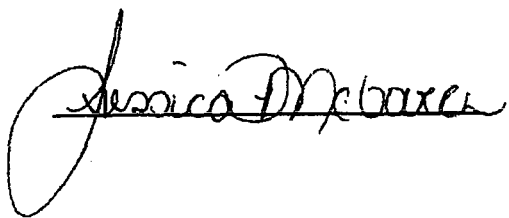


SEAN P. WALSH
CONFLICT PUBLIC DEFENDER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 25th day of March, 2013, served a true and correct copy of the attached NOTICE OF APPEAL via interoffice mail or as otherwise indicated upon the parties as follows:

<u> X </u>	Kootenai County Prosecuting Attorney P.O. Box 9000 Coeur d'Alene, Idaho 83816-9000	<input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail <input checked="" type="checkbox"/> Facsimile (208) 468-1833
<u> X </u>	Sara B. Thomas State Appellate Public Defender 3050 N. Lake Harbor Lane Boise, Idaho 83703	<input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail <input checked="" type="checkbox"/> Facsimile (208) 334-2985
<u> X </u>	Lawrence G. Wasden Attorney General P.O.Box 83720 Boise, Idaho 83720-0010	<input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail <input checked="" type="checkbox"/> Facsimile (208) 854-8074
<u> X </u>	Reporter for District Judge Benjamin R. Simpson JoAnn Schaller P.O. Box 9000 Coeur d'Alene, Idaho 83816-9000	<input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail <input checked="" type="checkbox"/> Facsimile (208) 446-1132



STATE OF IDAHO } ss
COUNTY OF KOOTENAI }

THIS IS TO CERTIFY THAT THE FOREGOING IS
A TRUE COPY OF THE ORIGINAL NOW ON
FILE OR RECORD IN THIS OFFICE.

SEALED ON THIS 10th DAY OF April 2013
CLERK OF THE DISTRICT COURT
BY Patricia McNamee Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI
2013 APR 12 A 9:39

STATE OF IDAHO
Plaintiff/Respondent

Vs.

KIRK JULLIARD GOSCH,
Defendant/Appellant

SUPREME COURT NO

CLERK'S CERTIFICATE
OF APPEAL

Appeal From: FIRST JUDICIAL DISTRICT, KOOTENAI COUNTY
HONORABLE JUDGE, Benjamin R. Simpson, Presiding.

Court Case # 2005-403

Memorandum Opinion and Order denying Motion to Suppress entered in the above
entitled matter on January 30, 2006, the Motions denied entered on February 17, 2006,
and the Verdict entered on September 13, 2006.

Attorney for Appellant: Sara Thomas, State Appellate Public Defender

Attorney for Respondent: Lawrence G. Wasden Office Attorney General

Appeal By: Kirk J. Gosch,

Appeal Against: State Of Idaho

Notice of Appeal Filed April 3, 2013.

Notice of Cross Appeal Filed: N/A

Appellant Fee Paid: N/A

Was District Court Reporter's Transcript requested? YES

Name of Reporter: JoAnn Schaller

DATE: April 10, 2013

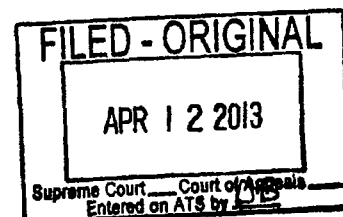
Clifford T. Hayes

CLERK OF DISTRICT COURT

By: *[Signature]*

Deputy Clerk

CLERK'S CERTIFICATE OF APPEAL



SARA B. THOMAS
State Appellate Public Defender
I.S.B. #5867

ERIK R. LEHTINEN
Chief, Appellate Unit
I.S.B. #6247
3050 N. Lake Harbor Lane, Suite 100
Boise, ID 83703
(208) 334-2712

STATE OF IDAHO
COUNTY OF KOOTENAI
FILED: ^{SS}

2013 APR 26 PM 2:45

CLERK DISTRICT COURT

[Signature]
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR KOOTENAI COUNTY

STATE OF IDAHO,

Plaintiff-Respondent,

v.

KIRK JULLIARD GOSCH,

Defendant-Appellant.

CASE NO. CR 2005-403

S.C. DOCKET NO. 40895

AMENDED
NOTICE OF APPEAL

TO: THE ABOVE-NAMED RESPONDENT, STATE OF IDAHO, AND THE PARTY'S ATTORNEYS, BARRY MCHUGH, KOOTENAI COUNTY, P.O. BOX 9000, 500 GOVERNMENT WAY, COEUR D'ALENE, ID, 83816-9000, AND THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant appeals against the above-named respondent to the Idaho Supreme Court from the Memorandum Opinion and Order Denying Motion to Suppress entered in the above-entitled matter on January 30, 2006, Motions denied in the above entitled matter on February 17, 2006, and the Verdict entered in the above-entitled matter on September 13, 2006, the Honorable Benjamin R. Simpson, presiding.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Idaho Appellate Rule (I.A.R.) 11(c)(1-10).

3. A preliminary statement of the issues on appeal, which the appellant then intends to assert in the appeal, provided any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal, is/are:

(a) Did the district court err in failing to grant the appellant's pretrial motions?

(b) Did the district court err in failing to grant the appellant's Motion to Suppress?

(c) Was there sufficient evidence to support a jury guilty verdict?

4. There is a portion of the record that is sealed. ~~None.~~ That portion of the record that is sealed is the Pre-Sentence Investigation Report (PSI) and Evaluation filed September 13, 2006.

5. **Reporter's Transcript.** The appellant requests the preparation of the **entire reporter's standard transcript** as defined in I.A.R. 25(c). The appellant also requests the preparation of the additional portions of the reporter's transcript:

(a) Pretrial Conference held on December 1, 2005 (Court Reporter, JoAnn Schaller, no estimation of pages was listed on the Register of Actions);

(b) Motion Hearing held on January 13, 2006 (Court Reporter, JoAnn Schaller, no estimation of pages was listed on the Register of Actions);

(c) Motion Hearing held on February 17, 2006 (Court Reporter, JoAnn Schaller, no estimation of pages was listed on the Register of Actions);

(d) Jury Trial held July 25-27, 2006, to include the voir dire, opening statements, closing arguments, jury instruction conferences, reading of the jury instructions, any hearings regarding questions from the jury during deliberations, return of the verdict, and any polling of the jurors (Court Reporters: Betty Sitter and JoAnn Schaller, no estimation of pages was listed on the Register of Actions); and

(e) Sentencing Hearing held on September 13, 2006 (Court Reporter: JoAnn Schaller, no estimation of pages was listed on the Register of Actions).

6. **Clerk's Record.** The appellant requests the standard clerk's record pursuant to I.A.R. 28(b)(2). The appellant requests the following documents to be included in the clerk's record, in addition to those automatically included under I.A.R. 28(b)(2):

- (a) Search Warrants Returned filed January 14, 2005;
- (b) Inventories of Seized Property filed January 14, 2005;
- (c) Plaintiff's Witness List filed November 22, 2005;
- (d) Defendant's Supplemental Witness List filed April 26, 2006;
- (e) All items, including any affidavits, objections, responses, briefs or memorandums, offered in support of or in opposition to the Motion to Suppress, filed or lodged, by the state, appellant or the court

- including, but not limited to, the Plaintiff's Brief in opposition to defendant's motion to suppress, lodged January 11, 2006;
- (f) Plaintiff's Supplemental Witness Lists filed January 10, 2006, February 10, 2006, and March 20, 2006;
- (g) Notice of filing Additional Sentencing Material - in PSI folder filed September 13, 2006;
- (h) Evaluation filed September 13, 2006;
- (i) All proposed and given jury instructions including, but not limited to, the Jury Instructions Given filed July 27, 2006;
- (j) Notice of Filing Additional Sentencing Material filed September 13, 2006;
- (m) All exhibits, including but not limited to letters or victim impact statements, addendums to the PSI or other items offered at the jury trial and sentencing hearing.

7. I certify:

- (a) That a copy of this Amended Notice of Appeal has been served on the Court Reporter, JoAnn Schaller;
- (b) That the appellant is exempt from paying the estimated fee for the preparation of the record because the appellant is indigent. (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 24(e));
- (c) That there is no appellate filing fee since this is an appeal in a criminal case (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 23(a)(8));

- (d) That arrangements have been made with Kootenai County who will be responsible for paying for the reporter's transcript, as the client is indigent, I.C. §§ 31-3220, 31-3220A, I.A.R. 24(e); and
- (e) That service has been made upon all parties required to be served pursuant to I.A.R. 20.

DATED this 26th day of April, 2013.



ERIK R. LEHTINEN
Chief, Appellate Unit

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 26th day of April, 2013, caused a true and correct copy of the attached AMENDED NOTICE OF APPEAL to be placed in the United States mail, postage prepaid, addressed to:


SEAN P WALSH
KOOTENAI COUNTY PUBLIC DEFENDER
206 E INDIANA AVENUE STE 117
COEUR D'ALENE ID 83814

JOANN SCHALLER
COURT REPORTER
PO BOX 9000
COEUR D'ALENE ID 83816-9000

BETTY SITTER
COURT REPORTER
C/O KARLENE BEHRINGER
TRIAL COURT ADMINISTRATOR
PO BOX 9000
COEUR D'ALENE ID 83816-9000

BARRY MCHUGH
KOOTENAI COUNTY PROSECUTOR'S OFFICE
P.O. BOX 9000
COEUR D'ALENE ID 83816-9000

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
Hand delivered to Attorney General's mailbox at Supreme Court


NANCY SANDOVAL
Administrative Assistant

ERL/tmf

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO

Plaintiff/Appellant

VS.

Kirk Julliard Gosch

Defendant/Respondent

SUPREME COURT

40895

CASE NUMBER

CR 2005-403

CLERK'S CERTIFICATE

PRESENTENCE REPORT filed 8-22-06

EVALUATION filed 9-13-06

NOTICE OF FILING ADDITIONAL SENTENCING MATERIAL filed 9-13-06

I, Amanda McCandless Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that the foregoing Record in this cause was compiled and bound under my direction and is a true, correct and complete Record of the pleadings and documents requested by Appellate Rule 28. I further certify that the following will be submitted as exhibits to this Record on Appeal:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this day of July 17, 2013.

CLERK OF DISTRICT COURT

Clifford E. Hayes

By:

Deputy Clerk

Amanda McCandless

CLERK'S CERTIFICATE

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO

Plaintiff/Respondent

SUPREME COURT 40895

CASE CR05-403

VS.

Kirk Julliard Gosch
Defendant/Appellant

CERTIFICATE OF SERVICE

I, Amanda McCandless, Deputy Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that I have personally served or mailed, by United States Mail, one copy of the Clerk's Record to each of the attorneys of record in this cause as follows:

Sean Walsh
Conflict State Appellate Public Defender
500 N. Government Way, Suite 100
Coeur d'Alene, ID 83814

Attorney for Appellant

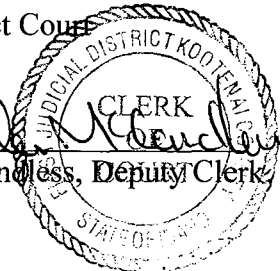
Mr. Lawrence Wasden
Attorney General State of Idaho
700 W. Jefferson # 210
Boise ID 83720-0010

Attorney for Respondent

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 17th day of July 2013.

Clifford T. Hayes
Clerk of District Court

By Amanda McCandless
Amanda McCandless, Deputy Clerk



CERTIFICATE OF SERVICE